



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

June 5, 2024

Andrew H Raines, Esq.
Evans Petree PC
P. O. Box 771020
Memphis, TN 38177-1020
Sent via email only to:
araines@evanspetree.com

John Sharpe, Esq.
Tennessee Comptroller of the Treasury
425 Rep. John Lewis Way North
Nashville, TN 37243-3400
Sent via email only to:
John.Sharpe@cot.tn.gov

Caren B Nichol, Esq.
Evans Petree PC
P. O. Box 771020
Memphis, TN 38177-1020
Sent via email only to:
cnichol@evanspetree.com

Robert T. Lee, Esq.
Lee Law Firm
P.O. Box 1297
Mount Juliet, TN 37121
Sent via email only to: robert@rtleelaw.com

David Scruggs, Esq.
Evans Petree PC
P. O. Box 771020
Memphis, TN 38177-1020
Sent via email only to:
dscruggs@evanspetree.com

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: LOWES HOME CENTER INC. V. WILSON COUNTY ASSESSOR'S OFFICE,
APD Case No. 53.02-232875J**

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:

LOWE'S HOME CENTERS, INC.,
Petitioner,

v.

**WILSON COUNTY ASSESSOR'S
OFFICE,**
Respondent,

and

**DIVISION OF PROPERTY
ASSESSMENTS,**
Respondent-Intervenor.

APD Case No. 53.02-232875J

**No./Parcel: 107354 / 077 07210 000
111423 / 077 07210 000
118924 / 077 07210 000
131302 / 077 07210 000
134148 / 077 07210 000**

**Tax Years: 2016, 2017, 2018, 2019, 2020,
2021, 2022**

AMENDED¹ INITIAL DECISION AND ORDER

These are appeals for tax years 2016-2022 regarding a Lowe's Home Center located in Mt. Juliet, Wilson County, Tennessee. The issue to be determined is whether the taxpayer, Lowe's Home Centers, Inc. (Lowe's), has proven by a preponderance of the evidence that the local board values should be lowered for tax years 2016-2022. Based upon the following findings of fact and conclusions of law, it is determined that the local board values should be reduced for all tax years.

The Wilson County Board of Equalization (local board) valued the property as follows:

Tax Years 2016-2020

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$3,573,300	\$7,374,800	\$10,948,100	\$4,379,240

Tax Years 2021-2022

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$5,359,700	\$7,341,900	\$12,701,600	\$5,080,640

¹ The INITIAL DECISION AND ORDER issued in this matter on May 31, 2024, contained typographical errors in Findings of Fact 51 and 60 that resulted in application of an appraisal ratio of 0.892 rather than 0.8592. Judge Thomas was alerted to the typographical errors by email from Lowe's counsel received on June 5, 2024. The Findings of Fact are corrected herein as reflected in the corrected equalized values for tax years 2018 and 2019 on the table on page 15 and the determination of values on page 17.

Lowe's timely appealed the local board values to the State Board of Equalization (State Board) for all tax years.² During the pendency of the appeals, the Division of Property Assessments (DPA) intervened.

SUMMARY OF EVIDENCE

Administrative Judge Leigh Thomas³ conducted the State Board hearing on tax years 2016-2022 via Webex videoconference on January 31 and February 5, 2024. Lowe's was represented at the hearing by counsel, Andrew H. Raines and Caren Nichol of Evans Petree. MAI appraiser and Executive Vice-President of CBRE, Lee Holliday, was admitted as an expert in the appraisal of retail property, including single-tenant retail big box stores, and testified on behalf of Lowe's. Brian Forrester, Senior Vice President, Retail Services, Colliers International, was admitted as an expert in the retail real estate market in Tennessee, including Mt. Juliet, and testified on behalf of Lowe's. The Wilson County Assessor ("Assessor") was represented by counsel Robert Lee. Deputy Assessor Audrey Joines and Gary James, Chief Appraiser for the DPA, testified on behalf of the Assessor. Mr. James was recognized as an expert in valuation and appraisal of property. The DPA was represented by Assistant General Counsel John Sharpe.

Twenty-seven exhibits were entered into the RECORD: EXHIBIT 1 – Holliday Appraisal, Tax Year 2016; EXHIBIT 2 – Holliday Appraisal, Tax Year 2017; EXHIBIT 3 – Holliday Appraisal, Tax Year 2018; EXHIBIT 4 – Holliday Appraisal, Tax Year 2019; EXHIBIT 5 – Holliday Appraisal, Tax Year 2020; EXHIBIT 6 – Holliday Appraisal, Tax Year 2021; EXHIBIT 7 – Holliday Appraisal, Tax Year 2022; EXHIBIT 8 – 2016 Property Record Card; EXHIBIT 9 – 2017 Property Record Card;

² The appeals for tax years 2019 and 2022 were amendments to prior tax years appeals pursuant to the State Board's CONTESTED CASE PROCEDURES RULE 0600-01-10(2). Although tax year 2023 was also appealed, it was not noticed for hearing and was not included in this hearing. It is still pending before the State Board.

³ Judge Thomas is an independent and neutral administrative judge assigned by the Tennessee Secretary of State's Administrative Procedures Division to preside over the case and issue an initial decision and order on behalf of the Tennessee Board of Equalization. TENN. CODE. ANN. § 67-5-1505.

EXHIBIT 10 – 2018 Property Record Card; EXHIBIT 11 – 2019 Property Record Card; EXHIBIT 12 – 2020 Property Record Card; EXHIBIT 13 – 2021 Property Record Card; EXHIBIT 14 – 2022 Property Record Card; EXHIBIT 15 – Lowes Home Improvement – Annual Report, Tax Year 2015; EXHIBIT 16 – Lowes Home Improvement – Annual Report, Tax Year 2016; EXHIBIT 17 – Lowes Home Improvement – Annual Report, Tax Year 2017; EXHIBIT 18 – Lowes Home Improvement – Annual Report, Tax Year 2018; EXHIBIT 19 – Lowes Home Improvement – Annual Report, Tax Year 2019; EXHIBIT 20 – Lowes Home Improvement – Annual Report, Tax Year 2020; EXHIBIT 21 – Lowes Home Improvement – Annual Report, Tax Year 2021; EXHIBIT 22 – Plats and Maps; EXHIBIT 23 – Mt. Juliet Area Land Sales; EXHIBIT 24 – The Paddock Area Retail Sales; EXHIBIT 25 – Sales Data Collection Manual; EXHIBIT 26 – TN Big Box Sales; EXHIBIT 27 – Gary James MVS Cost Approach. A summary of Mr. Holliday’s appraisals prepared by Lowe’s counsel was marked for demonstrative purposes only but was not entered into the RECORD.

The RECORD was initially held open until March 8, 2024, to allow for completion of the transcript and post-hearing filings by the parties. That time was further extended until March 19, 2024, to allow the Assessor and DPA time to respond to Lowe’s post-hearing motion.

FINDINGS OF FACT⁴

1. The subject property is a 16.69 acre⁵ parcel located at 300 Pleasant Grove Road in Mt. Juliet, Wilson County, Tennessee.
2. The subject property is located within The Paddocks development, a successful retail development still active with new construction and leasing activity.

⁴ The findings of fact include general findings applicable to all tax years as well as a year-by-year breakdown of the valuation evidence in the RECORD.

⁵ It is noted that the acreage utilized by the Assessor is 16.73 with a building size of 122,364 square feet based on the property record cards. The acreage and building size as provided by Lowe’s derived from the store building plans are relied upon for purposes of this order.

3. Mt. Juliet is a growing suburban community of the Nashville metropolitan area. It has been experiencing population growth and an expanding trade area.
4. The subject consists of a level site with limited visibility, frontage, and access along the west side of the local thoroughfare, Mt. Juliet Road, but with good frontage and access along Pleasant Grove Road, a secondary road.
5. The property is improved with a 125,601 square foot building built in 2009.
6. The improvement is a single-tenant, big box retail store, owner-occupied and operated as a Lowe's Home Improvement retail store since the time of construction.
7. The building features concrete block walls with an exterior façade of brick.
8. The interior is a large, open sales floor with concrete flooring and exposed ceilings with drop-down fluorescent lighting.
9. The subject also includes a garden center, overhead canopies, a large parking lot and various other site improvements.
10. The subject is considered in average condition for a building of its age during the time-period from 2016 to 2022.
11. There were no significant physical changes to the property over the years in question, and there is no evidence of deferred maintenance.
12. The highest and best use of the subject for the relevant tax years is its existing use as a retail development.
13. Lowe's is considered a first-generation retailer and is considered a superior credit tenant.
14. Mr. Holliday personally inspected the subject property and performed USPAP⁶ compliant appraisals for each separate tax year, considering all three approaches to value.⁷

⁶The Uniform Standards of Professional Appraisal Practice (USPAP) is the generally recognized ethical and performance standards for the appraisal profession in the United States.

15. In choosing his sales comparables for each tax year, Mr. Holliday considered the property interest conveyed in the sales, available data on the transaction, location, size, age, use of the building, physical characteristics, and the transaction date among other factors.

16. Many of the sales relied upon by Mr. Holliday in his sales approach analysis for each year were sales where the stores were closed at the time of sale (dark store sales) with the intent to reconfigure into multiple tenant retail or second-generation retail uses. Reliance on dark store sales skewed the range of sales comparables for each tax year lower and artificially deflated the subject's value. Therefore, little weight was given to Mr. Holliday's sales comparison approach.

17. Mr. Holliday's income approach for each year included multiple retail locations within Tennessee and adjustments to the comparable properties when appropriate.

18. In choosing his income approach comparables, Mr. Holliday considered location, size, use of the building, physical characteristics of the building, available date, and proximity of the lease transaction date to valuation date.

19. As warranted, Mr. Holliday made adjustments for location, market conditions, time adjustments, size adjustments, age, condition, and tenancy adjustments. Mr. Holliday also considered whether other adjustments were necessary.

20. For each tax year's income approach value, Mr. Holliday included rental comps of one or more retail tenants like Bargain Hunt or Big Lots that have lower creditworthiness than retailers like Lowe's or Walmart.

⁷ Although Mr. Holiday's appraisals included the cost approach, he gave it no weight in his reconciliation of value for each tax year, and it was only used as a test of reasonableness. Therefore, for purposes of this Order, Mr. Holliday's cost approach is not examined other than to note it is substantially higher than his reconciled value for each tax year. Mr. Holiday's cost approach value for the relevant tax years is as follows: 2016 - \$10,000,000; 2017-2019 - \$9,900,000; 2020 - \$9,700,000; 2021 - \$9,800,000; 2022 - \$10,400,000. However, his cost approach value did not consider any deduction for obsolescence which would have lowered the cost approach value for each year.

21. For purposes of this order, primary weight for valuation was placed on Mr. Holliday's income approach, modified with a higher rent per square foot (psf) value to account for inclusion of any less desirable retail rental comparables.

22. Mr. Forrester's testimony focused on both his involvement in the development of The Paddocks as well as the local retail market in Mt. Juliet. Mr. Forrester supported Mr. Holliday's overall valuation analysis for each tax year as well as the rental rates and cap rates utilized.

23. The Assessor offered value evidence for only one tax year of the six under appeal – a cost approach for tax year 2021.

24. The Assessor submitted a list of seven land sales from the subject's immediate area and a list of three retail sales from The Paddocks. Deputy Assessor Joines offered limited testimony on the sales that occurred prior to the date of valuation for all tax years. Three of the land sales and two of The Paddock retail sales were post-assessment date for all tax years under appeal. However, none of the sales were adjusted and are therefore given little weight.

25. Although the Assessor did not perform either a sales comparison or income approach, Mr. James offered limited testimony on the sales of six big box stores located in Tennessee that sold from December 2016 to June 2020. Mr. James indicated that the sales may or may not be leased fee.⁸ However, none of the big box sales were adjusted and can be given little weight.

26. The market value for relevant tax years should be equalized⁹ by application of the appraisal ratio of 0.8592 to tax years 2018-2019 and application of 0.7912 for tax year 2020.

Tax Year 2016 Valuation Evidence

⁸ "In appraisal practice, the lessor's, or landlord's, position is referred to as the leased fee. The rights of the lessor and the lessee are specified by contract terms contained in the lease. Although the specific details of leases vary, a lease generally provides the lessor with the following: rent to be paid by the lessee under stipulated terms; the right of repossession at the termination of the lease; default provisions; in appraisal practice, the lessor's interest in a property is considered a leased fee regardless of the duration of the lease, the specified rent, the parties to the lease, or any of the terms in the lease contract." *The Appraisal of Real Estate*, McKinley, 15th Edition, at 62.

⁹ The remaining tax years were either reappraisal tax years or have an appraisal ratio of 1%.

27. Lowe's contended value for 2016 was based on Mr. Holliday's 2016 appraisal which determined that the value for the subject property was \$7,400,000 based on a reconciliation of his sales comparison approach and income approach.

28. Mr. Holliday's 2016 sales comparison approach relied on 7 sales comparables of other big box stores in Tennessee that sold between June 2013 and August 2015. Three of the comparables were fee simple sales, all of which involved properties where the big box was closed at the time of the sale. The remaining four comparables were leased fee sales that were adjusted to convert them to fee simple sales.

29. The adjusted price psf of the comparables ranged from \$32.53-\$112.15 with an average psf value of \$71. Mr. Holliday determined that an appropriate psf value for the subject based on these comparables was \$58.12 (total value \$7,300,000).

30. For his 2016 income approach, Mr. Holliday relied upon 6 comparable retail rental properties.

31. The adjusted psf rental rate for these comparables ranged from \$4.92 psf to \$7.51 psf. Mr. Holliday determined that an appropriate market rental rate for the subject property was \$5.50 psf.

32. Mr. Holliday determined that the appropriate base cap rate for the subject property was 7.75% based on both leased fee sales and investor surveys. Mr. Holliday utilized a loaded cap rate of 7.83% for a value under the income approach of \$7,500,000 rounded (R) or \$59.71 psf.

33. The Assessor offered no valuation analysis for tax year 2016, relying solely on the local board value of \$10,948,100 with no supporting evidence.

34. Based on the evidence, the value of the subject property for tax year 2016 should be reduced to \$8,229,040 (\$65.51 psf) based on Mr. Holliday's income approach modified with a psf rental rate of \$6.00.¹⁰

¹⁰ The full calculations performed to reach each tax year's value are included in the table on page 15.

Tax Year 2017 Valuation Evidence

35. Lowe's contended value for 2017 was based on Mr. Holliday's 2017 appraisal which determined that the value for the subject property was \$7,500,000 based on a reconciliation of his sales comparison approach and income approach.

36. Mr. Holliday's 2017 sales comparison approach relied on 7 sales comparables of other big box stores in Tennessee that sold between June 2012 and January 2017. Four of the comparables were fee simple sales all of which involved properties where the big box was a dark store at the time of the sale. The remaining three comparables were leased fee sales that were adjusted to convert them to fee simple sales.

37. The adjusted price psf of the comparables ranged from \$33.40-\$115.36 with an average psf value of \$69. Mr. Holliday determined that an appropriate psf value for the subject based on these comparables was \$59.71 (total value \$7,500,000).

38. For his 2016 income approach, Mr. Holliday relied upon 6 comparable retail rental properties.

39. The adjusted psf rental rate for these comparables ranged from \$4.97 psf to \$7.58 psf. Mr. Holliday determined that an appropriate market rental rate for the subject property was \$5.50 psf.

40. Mr. Holliday determined that the appropriate base cap rate for the subject property was 7.75% based on both leased fee sales and investor surveys. Mr. Holliday utilized a loaded cap rate of 7.83% for a value under the income approach of \$7,500,000(R) or \$59.71 psf.

41. The Assessor offered no valuation analysis for tax year 2017, relying solely on the local board value \$10,948,100 with no supporting evidence.

42. Based on the evidence, the value of the subject property for tax year 2017 should be reduced to \$8,229,040 (\$65.51 psf) based on Mr. Holliday's income approach modified with a psf rental rate of \$6.00.

Tax Year 2018 Valuation Evidence

43. Lowe's contended value for 2018 was based on Mr. Holliday's 2018 appraisal which determined that the value for the subject property was \$7,900,000 based on a reconciliation of his sales comparison approach and income approach.

44. Mr. Holliday's 2018 sales comparison approach relied on 5 sales comparables of other big box stores in Tennessee that sold between June 2014 and June 2017. Three of the comparables were fee simple sales all of which involved properties where the big box was a dark store at the time of the sale. The remaining two comparables were leased fee sales that were adjusted to convert them to fee simple sales.

45. The adjusted price psf of the comparables ranged from \$47.43-\$106.14 with an average psf value of \$73. Mr. Holliday determined that an appropriate psf value for the subject based on these comparables was \$62.10 (total value \$7,800,000).

46. For his 2018 income approach, Mr. Holliday relied upon 6 comparable retail rental properties.

47. The adjusted psf rental rate for these comparables ranged from \$5.16 psf to \$6.72 psf. Mr. Holliday determined that an appropriate market rental rate for the subject property was \$5.65 psf.

48. Mr. Holliday determined that the appropriate base cap rate for the subject property was 7.50% based on both leased fee sales and investor surveys. Mr. Holliday utilized a loaded cap rate of 7.58% for a value under the income approach of \$7,900,000(R) or \$62.90 psf.

49. The Assessor offered no valuation analysis for tax year 2018, relying solely on the local board value of \$10,948,100 with no supporting evidence.

50. Based on the evidence, the value of the subject property for tax year 2018 should be reduced to \$8,597,840 (\$68.45 psf) based on Mr. Holliday's income approach modified with a psf rental rate of \$6.15.

51. The equalized 2018 value is \$7,387,260 (appraisal ratio 0.8592).

Tax Year 2019 Valuation Evidence

52. Lowe's contended value for 2019 was based on Mr. Holliday's 2019 appraisal which determined that the value for the subject property was \$8,000,000 based on a reconciliation of his sales comparison approach and income approach.

53. Mr. Holliday's 2019 sales comparison approach relied on 6 sales comparables of other big box stores in Tennessee that sold between January 2017 and November 2018. Three of the comparables were fee simple sales all of which involved properties where the big box was a dark store at the time of the sale. The remaining three comparables were leased fee sales that were adjusted to convert them to fee simple sales.

54. The adjusted psf of the comparables ranged from \$56.41-\$109.23 with an average psf value of \$74. Mr. Holliday determined that an appropriate psf value for the subject based on these comparables was \$63.69 (total value \$8,000,000).

55. For his 2019 income approach, Mr. Holliday relied upon 6 comparable retail rental properties.

56. The adjusted psf rental rate for these comparables ranged from \$5.20 psf to \$6.78 psf. Mr. Holliday determined that an appropriate market rental rate for the subject property was \$5.70 psf.

57. Mr. Holliday determined that the appropriate base cap rate for the subject property was 7.50% based on both leased fee sales and investor surveys. Mr. Holliday utilized a loaded cap rate of 7.58% for a value under the income approach of \$8,000,000(R) or \$63.69 psf.

58. The Assessor offered no valuation analysis for tax year 2019, relying solely on the local board value of \$10,948,100 with no supporting evidence.

59. Based on the evidence, the value of the subject property for tax year 2019 should be reduced to \$8,792,070 (\$70 psf) based on Mr. Holliday's income approach modified with a psf rental rate of \$6.20.

60. The equalized 2019 value is \$7,554,150 (appraisal ratio 0.8592).

Tax Year 2020 Valuation Evidence

61. Lowe's contended value for 2020 was based on Mr. Holliday's 2020 appraisal which determined that the value for the subject property was \$8,200,000 based on a reconciliation of his sales comparison approach and income approach.

62. Mr. Holliday's 2020 sales comparison approach relied on 6 sales comparables of other big box stores in Tennessee that sold between January 2017 and March 2019. Three of the comparables were fee simple sales all of which involved properties where the big box was a dark store at the time of the sale. The remaining three comparables were leased fee sales that were adjusted to convert them to fee simple sales.

63. The adjusted psf of the comparables ranged from \$58.02-\$97.35 with an average psf value of \$97. Mr. Holliday determined that an appropriate psf value for the subject based on these comparables was \$66.08 (total value \$8,300,000).

64. For his 2020 income approach, Mr. Holliday relied upon 7 comparable retail rental properties.

65. The adjusted psf rental rate for these comparables ranged from \$4.72 psf to \$6.85 psf. Mr. Holliday determined that an appropriate market rental rate for the subject property was \$5.75 psf.

66. Mr. Holliday determined that the appropriate base cap rate for the subject property was 7.50% based on both leased fee sales and investor surveys. Mr. Holliday utilized a loaded cap rate of 7.58% for a value under the income approach of \$8,100,000(R) or \$64.49 psf.

67. The Assessor offered no valuation analysis for tax year 2020, relying solely on the local board value of \$10,948,100 with no supporting evidence.

68. Based on the evidence, the value of the subject property for tax year 2020 should be reduced to \$8,869,130 (\$70.61 psf) based on Mr. Holliday's income approach modified with a psf rental rate of \$6.25.

69. The equalized 2020 value is \$7,017,260 (appraisal ratio 0.7912).

Tax Year 2021 Valuation Evidence

70. Lowe's contended value for 2021 was based on Mr. Holliday's 2021 appraisal which determined that the value for the subject property was \$8,300,000 based on a reconciliation of his sales comparison approach and income approach.

71. Mr. Holliday's 2021 sales comparison approach relied on 6 sales comparables of other big box stores in Tennessee that sold between January 2017 and March 2019. Three of the comparables were fee simple sales all of which involved properties where the big box was a dark store at the time of the sale. The remaining three comparables were leased fee sales that were adjusted to convert them to fee simple sales.

72. The adjusted price psf of the comparables ranged from \$59.63-\$100.21 with an average psf value of \$76. Mr. Holliday determined that an appropriate psf value for the subject based on these comparables was \$67.67 (total value \$8,500,000).

73. For his 2021 income approach, Mr. Holliday relied upon 5 comparable retail rental properties. The adjusted psf rental rate for these comparables ranged from \$5.30 psf to \$6.92. Mr. Holliday determined that an appropriate market rental rate for the subject property was \$5.80 psf.

74. Mr. Holliday determined that the appropriate base cap rate for the subject property was 7.50% based on both leased fee sales and investor surveys. Mr. Holliday utilized a loaded cap rate of 7.56% for a value under the income approach of \$8,200,000(R) or \$65.29 psf.

75. The Assessor performed a cost approach with an effective date of January 1, 2021, valuing the subject property at \$14,453,022 (depreciated improvement \$9,093,312 and land \$5,359,710) to support the local board value of \$12,701,600.

76. Based on the evidence, the value of the subject property for tax year 2021 should be reduced to \$8,953,230 (\$71.28 psf) based on Mr. Holliday's income approach modified with a psf rental rate of \$6.30.

Tax Year 2022 Valuation Evidence

77. Lowe's contended value for 2022 was based on Mr. Holliday's 2022 appraisal which determined that the value for the subject property was \$8,600,000 based on a reconciliation of his sales comparison approach and income approach.

78. Mr. Holliday's 2022 sales comparison approach relied on 7 sales comparables of other big box stores in Tennessee that sold between January 2017 and December 2021. Three of the comparables were fee simple sales all of which involved properties where the big box was a dark store at the time of the sale. The remaining four comparables were leased fee sales that were adjusted to convert them to fee simple sales.

79. The adjusted price psf of the comparables ranged from \$61.25-\$133.10 with an average psf value of \$86. Mr. Holliday determined that an appropriate psf value for the subject based on these comparables was \$70.86 (total value \$8,900,000).

80. For his 2022 income approach, Mr. Holliday relied upon 5 comparable rental properties. The adjusted psf rental rate for these comparables ranged from \$5.36 psf to \$6.98 psf. Mr. Holliday determined that an appropriate market rental rate for the subject property was \$5.85 psf.

81. Mr. Holliday determined that the appropriate base cap rate for the subject property was 7.50% based on both leased fee sales and investor surveys. Mr. Holliday utilized a loaded cap rate of 7.56% for a value under the income approach of \$8,300,000(R) or \$66.08 psf.

82. The Assessor offered no valuation analysis for tax year 2022, relying solely on the local board value of \$12,701,600 with no supporting evidence.

83. Based on the evidence, the value of the subject property for tax year 2022 should be reduced to \$9,030,360 (\$71.90 psf) based on Mr. Holliday's income approach modified with a psf rental rate of \$6.35.

84. The valuation for each tax year based on the proof at hearing is shown on the table that follows.

Tax Year	2016 & 2017	2018	2019	2020	2021	2022
PGI PSF Rent x 125,601 sf	\$6.00 x 125,601 \$753,606	\$6.15 x 125,601 \$772,446	\$6.20 x 125,601 \$778,726	\$6.25 x 125,601 \$785,006	\$6.30 x 125,601 \$791,286	\$6.35 x 125,601 \$797,566
Vacancy (5%) & Credit (2%)	(\$37,680) (\$15,072)	(\$47,505) (\$15,449)	(\$38,936) (\$15,575)	(\$39,250) (\$15,700)	(\$39,564) (\$15,826)	(\$39,878) (\$15,951)
EGI	\$700,854	\$709,492	\$724,215	\$730,056	\$735,896	\$741,737
Operating Expenses	(\$56,520) \$0.45 psf	(\$57,776) \$0.46 psf	(\$57,776) \$0.46 psf	(\$57,776) \$0.46 psf	(\$59,032) \$0.47 psf	(\$59,032) \$0.47 psf
NOI	\$644,334	\$651,716	\$666,439	\$672,280	\$676,864	\$682,705
Loaded Cap	7.83%	7.58%	7.58%	7.58%	7.56%	7.56%
Value	\$8,229,040	\$8,597,840	\$8,792,070	\$8,869,130	\$8,953,230	\$9,030,490
Equalized Value	\$8,229,040	\$7,387,260 Appraisal Ratio .8592	\$7,554,150 Appraisal Ratio .8592	\$7,017,260 Appraisal Ratio .7912	\$8,953,230	\$9,030,490

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. *See* STATE BOARD RULE 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2nd 515 (Tenn. App. 1981).

Pursuant to TENN. CODE ANN. § 67-5-601(a), "The 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 value...." 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 CONCLUSION OF LAW

Based on a thorough review of the RECORD, Lowe's met the burden of proof for a reduction in the local board values for all tax years. Mr. Holliday's appraisals and testimony, as well Mr. Forrester's testimony, supported a reduction in value. While little weight was given to Mr. Holliday's sales comparison approach because of the inclusion of dark stores¹¹ in the comparable sales, the income approach utilized for each tax year was persuasive. However, the judge declines to adopt the psf rental rate utilized by Mr. Holliday for each tax year, finding that a higher rental rate is justified for the subject based on area demand, location, and other factors. The subject property is in a growing market with expanding retail opportunities.

The extremely limited valuation proof put forth by the Assessor did not rebut Lowe's proof. Indeed, it is puzzling that the Assessor's only actual valuation proof was a cost approach for tax year 2021, some twelve years post-construction. As was noted in a prior decision involving a Lowe's,

“The cost approach may not be the most reliable way to value a property like the subject because investors or buyers typically do not look at the cost of the improvement for an income-producing property. Buyers may be able to acquire the property for less than the cost of building a new comparable structure. Potential purchasers/lessees are considering market lease rate comps or sales comps rather than the cost incurred in construction, and the cost approach does not take into account many factors that would be important to market participants, such as traffic counts, retail clusters, and the number of houses and buildings in the area. The older the property, the more difficult it is to accurately perform a cost analysis, as obsolescence gets harder to calculate. It is difficult to adequately estimate

¹¹ Essentially, the Dark Store Theory is an argument made primarily by big box taxpayers that advocates the use of vacant (dark) stores as comparable sales in valuing a fully functioning occupied commercial property for tax assessment purposes. “The Commission has previously held that the Dark Store Theory is not given weight in Tennessee, and that remains the case. Appraisal of all properties, big box included, turns on traditional appraisal principles.” *Wal-Mart Real Estate Bus. Trust* (Final Decision & Order, Hamilton County, Tax Years 2018-2020, issued November 4, 2021); *see also J.C. Penney Properties, LLC* (Initial Decision & Order [now final], Shelby County, Tax Years 2017-2020, issued July 26, 2021) (administrative judge declined to fully address Dark Store Theory because sales comparison approach was not relied upon as primary approach to value and because of the failing nature of the subject property. “If this was a case where the Taxpayer appraiser placed primary emphasis on sales comparison for valuation and the subject property were a stable property that was thriving rather than surviving, the discussion of Dark Store theory would be examined more thoroughly.”

depreciation under the cost approach as a property ages. Unless the improvements are relatively new, the cost approach is generally given little weight.”

Lowes Home Center Inc. (Initial Decision & Order [now final], Shelby County, Tax Years 2014-2020. Issued December 1, 2021) (judge declined to give weight to the cost approach when store was more than ten years old as of the valuation date of the earliest tax year under appeal); *see also The Appraisal of Real Estate*, McKinley, 15th Edition, at 530 (“Because cost and market value are usually more closely related when improvements are new, the cost approach is more important in estimating the market value of new or relatively new construction.”)

Likewise, the sales testified to by both Deputy Assessor Joines and Mr. James can be given little weight because none of the sales were adjusted to bring them in-line with the subject property. “Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value.” *E.B. Kissell, Jr.* (Final Decision & Order, Shelby County, Tax Years 1991 and 1992, issued June 29, 1993).

Based on the evidence at hearing, Lowe’s has met the burden of proof to establish a reduction in the local board value and the Assessor has failed to rebut that evidence.

DETERMINATION

It is, therefore, ORDERED that the following equalized values be adopted for tax years 2016-2022.

Tax Years 2016-2017: \$8,229,040

Tax Year 2018: \$7,387,260

Tax Year 2019: \$7,554,150

Tax Year 2020: \$7,017,260


Tax Year 2021: \$8,953,230

Tax Year 2022: \$9,030,490

The policy reasons for this decision are to ensure a fair review and hearing of property tax appeals and to uphold the laws of the State of Tennessee and the rules of the State Board of Equalization.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **5th day of June, 2024**.



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 **5th day of June, 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 **June 5, 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 **June 20, 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 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 **June 12, 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@tnsos.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