

PUBLIC NOTICE

CALL FOR A SPECIAL MEETING OF THE BLOUNT COUNTY BOARD OF COMMISSIONERS TO BE HELD AT THE BLOUNT COUNTY COURTHOUSE, ROOM 430, IN MARYVILLE, TENNESSEE, ON TUESDAY, OCTOBER 9, 2007, AT 6:35 P.M.

Pursuant to and in accordance with the authority vested in me by Tennessee Code Annotated § 5-5-105, I hereby call the Board of County Commissioners of Blount County, Tennessee, to meet in a special session meeting on the 9th day of October, 2007, at 6:35 p.m. at the Blount County Courthouse, Room 430, in Maryville, Tennessee, for the following:

1. Discussion and possible action regarding reclassification by the Property Assessor of properties rezoned commercial.

August 23, 2007

APPROVED:

ATTEST:

DR. ROBERT L. RAMSEY
Commission Chairman

ROY CRAWFORD, JR.
County Clerk

JERRY G. CUNNINGHAM
County Mayor

SPONSORED BY COMMISSIONER RON FRENCH

RESOLUTION NO. _____

**A RESOLUTION OF THE BLOUNT COUNTY LEGISLATIVE BODY REGARDING
COMMERCIAL ASSESSMENTS.**

BE IT RESOLVED, by the Board of Commissioners of Blount County, Tennessee, in session assembled this 9th day of October, 2007:

WHEREAS, it has come to the attention of the Blount County Legislative Body that there are certain tracts or parcels of property located in Blount County, Tennessee, which properties are either vacant or essentially vacant; and

WHEREAS, said property is presently zoned commercial; and

WHEREAS, said properties, pursuant to T.C.A. §67-5-801, are classified by the Assessor of Property as residential property or farm property and are not classified as industrial and commercial property; and

WHEREAS, pursuant to T.C.A. §67-5-801(c)(1) all properties are required to be classified according to their immediate most suitable economic use; and

WHEREAS, the Blount County Legislative Body believes that all property should be classified pursuant to its immediate most suitable economic use.

NOW, THEREFORE, BE IT RESOLVED by the Blount County Legislative Body in session assembled on the 9th day of October, 2007, as follows:

1. That the Blount County Legislative Body hereby requests and urges the Blount County Assessor of Property to classify all vacant or unused property located in Blount County, Tennessee, which is zoned commercial or industrial to be classified as commercial and industrial provided said properties meet the requirements of T.C. A. §67-5-801(c)(1).
2. **BE IT FURTHER RESOLVED** that the Blount County Zoning Officer prepare a list of properties which are currently vacant and zoned commercial and present this list to the Blount County Assessor of Property. The Blount County Zoning Officer is further directed to update and keep this list current and provide any updated information to the Blount County Assessor of Property.

**BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER
PASSAGE, THE PUBLIC WELFARE REQUIRING IT.**

CERTIFICATION OF ACTION

ATTEST

Commission Chairman

County Clerk

Approved: _____

Vetoed: _____

County Mayor

Date

67-5-501. Definitions. —

For purposes of classification and assessment of property:

(1) "All other tangible personal property" includes all tangible personal property, including that used in agriculture, except public utility tangible personal property and commercial industrial tangible personal property;

(2) "Commercial and industrial tangible personal property" includes personal property, such as goods, chattels and other articles of value that are capable of manual or physical possession, and machinery and equipment that are:

(A) Used essentially and principally for the commercial or industrial purposes or processes for which they are intended; and

(B) If affixed or attached to real property, can be detached without material injury to such real property;

(3) "Farm property" includes all real property that is used, or held for use, in agriculture, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs, including golf course playing hole improvements;

(4) "Industrial and commercial property" includes all property of every kind used, directly or indirectly, or held for use, for any commercial, mining, industrial, manufacturing, trade, professional, club whether public or private, nonexempt lodge, business, or similar purpose, whether conducted for profit or not. All real property that is used, or held for use, for dwelling purposes that contains two (2) or more rental units is hereby defined and shall be classified as "industrial and commercial property";

(5) "Intangible personal property" includes personal property, such as money, any evidence of debt owed to a taxpayer, any evidence of ownership in a corporation or other business organization having multiple owners, and all other forms of property, the value of which is expressed in terms of what the property represents rather than its own intrinsic worth. "Intangible personal property" includes all personal property not defined as "tangible personal property";

(6) "Movable structure" includes any mobile home or such other movable structure that is constructed as a trailer or semitrailer and designed to either be towed along the highways or to be parked off the highways, and that may be used, temporarily or permanently, as a residence, apartment, office, storehouse, warehouse or for any other commercial or industrial purpose; but does not include self-propelled vehicles, sleeping and camping facilities attached to, or designed to be attached to, or drawn by a pick-up truck or an automobile, and that contains less than three hundred square feet (300 sq. ft.) of enclosed space;

(7) "Personal property" includes every species and character of property that is not classified as real property;

(8) "Public utility property" includes all property of every kind, whether owned or leased, and used, or held for use, directly or indirectly in the operation of a public utility, which includes, but is not necessarily limited to, the following business entities, whether corporate or otherwise:

(A) Railroad companies;

(B) Telephone companies other than the following:

(i) Companies providing cellular telephone service as defined in § 65-4-101(6)(F);

(ii) Companies providing radio common carrier service as defined in § 65-30-103; and

(iii) Companies providing long distance telephone service;

(C) Freight and private car companies that are defined as any business, other than a railroad company, that owns, uses, furnishes, leases, rents or operates to, from, through, in or across this state or any part thereof any kind of railroad car, including, but not necessarily limited to, flat, tank, refrigerator, or similar type cars;

(D) Street car companies;

(E) Power companies, whether hydroelectric, steam, atomic, or other kinds for the transmission of power;

(F) Express companies;

(G) Pipeline companies;

(H) Gas companies;

(I) Electric light companies;

(J) Water and/or sewerage companies;

(K) Motor bus and/or truck companies holding a certificate of convenience and necessity or contract hauler's permit from the department of safety or the federal highway administration and domiciled in this state and/or owning or leasing real or personal property located in this state;

(L) Taxicab, transit and limousine companies;

(M) Commercial air carrier companies holding a certificate of convenience and necessity from the department of transportation, civil aeronautics board, federal aviation administration, or any other federal or state regulatory agency; excepting those companies whose operations are solely chartered operations; and

(N) Water transportation carrier companies which operate boats and barges over the waterways of this state for hire, which are registered for these purposes with the United States army corps of engineers or any other federal or state agency and which are domiciled in this state or own or lease real or personal property located in this state; provided, that the portion of property of these companies used for water carriage that was exempt from regulation by the interstate commerce commission under federal law in effect on November 1, 1995, shall not be considered public utility property for classification and assessment purposes;

(9) (A) "Real property" includes lands, tenements, hereditaments, structures, improvements, movable property assessable under § 67-5-802, or machinery and equipment affixed to realty, except as otherwise provided for in this section, and all rights thereto and interests therein, equitable as well as legal;

(B) Real property includes, but is not limited to, the following:

(i) Surface, underground or elevated railroads, and railroad structures, substructures and superstructures, tracks and the metal thereon, branches, switches and other improvements or structures permitted or authorized to be made in, upon, or under any public or private property;

(ii) Telephone, broadcast, transmission and telegraph poles, supports, conduits, towers and enclosures for electrical conductors upon, above and underground and pipes and conduits used for wire, cables and lines buried underground, except for underground conduits and enclosures for wire, cables, lines and similar facilities owned, leased or used to provide services pursuant to the terms and authority of a franchise license issued by an appropriate franchising authority in accordance with § 7-59-102. This subdivision (9)(B) shall not operate to change the classification of any radio or television broadcast property that was assessed as tangible personal property for the tax year 2003;

(iii) Mains, pipes, pipelines and tanks permitted or authorized to be built, laid or placed in, upon, or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, excluding propane tanks for residential use and above ground storage tanks that can be moved without disassembly and are not affixed to the land; and

(iv) Bridges, wharves, piers, boat docks, boat houses, marinas and other similar structures that are attached to real property by anchors, cables, wires, ramps, pillars, poles, foundation, or connected with any one (1) utility service, such as electricity, natural gas, water or telephone; provided, that nothing in this subdivision (9)(B) shall be construed to include boats temporarily connected with any utility service, or floating dry-dock equipment or boat lifts;

(10) "Residential property" includes all real property that is used, or held for use, for dwelling purposes and that contains not more than one (1) rental unit. All real property that is used, or held for use, for dwelling purposes, but that contains two (2) or more rental units, is defined and shall be classified as "industrial and commercial property";

(11) "Revised assessment" means the correction of an error or omission in the assessment roll so long as the trustee or the municipal collector retains control of the tax roll book; and

(12) "Tangible personal property" includes personal property such as goods, chattels, and other articles of value that are capable of manual or physical possession, and certain machinery and equipment, separate and apart from any real property, and the value of which is intrinsic to the article itself.

[Acts 1973, ch. 226, § 6; 1974, ch. 467, §§ 2, 3; 1982, ch. 774, §§ 1, 2; T.C.A., § 67-601; Acts 1984, ch. 832, § 5; 1989, ch. 312, § 3; 1995, ch. 305, § 121; 1997, ch. 109, § 1; 1999, ch. 198, § 1; 2000, ch. 571, § 2; 2004, ch. 719, § 1; 2006, ch. 521, § 1.]

67-5-601. General policy — Legislative findings. —

(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 values, and when appropriate, subject to the provisions of the Agricultural, Forest and Open Space Land Act of 1976, codified in part 10 of this chapter.

(b) It is the legislative intent that no appraisal under this part shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value, which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.

(c) (1) The general assembly finds that the increased market value of certain residential property zoned for commercial use has caused an increase in taxes to the extent that citizens are faced with the necessity of selling dwelling houses in which they have lived for many years. The general assembly finds that present use valuation has been extended to others, and is warranted under certain circumstances to relieve the burden of increased taxation to residential owners.

(2) It is the policy of this state that the owners of residential property who have lived on that property for a significant period of time should be allowed to continue to live on that property without a disproportionate increase in taxes due to the property being zoned for commercial use.

(3) For the purposes of this subsection (c):

(A) "Dwelling house" means a residence occupied by the owner of an estate in that property, with such residence being zoned for commercial use, used solely for residential purposes, and occupied by that owner or a person to whom the current owner is a lineal descendant for a period of twenty-five (25) years or more, together with the real estate upon which it is situated up to a maximum five (5) acres; and

(B) "Owner" means a citizen and resident of Tennessee who occupies the citizen's or resident's dwelling house, as opposed to occupying any other residence, for at least nine (9) months out of each calendar year.

(4) Any owner of a dwelling house may make application to the assessor of property of the county in which the property is located for its classification under this subsection (c). Property that has been determined by the assessor of property to qualify under this subsection (c) shall be valued for ad valorem tax purposes at its market value for residential purposes. The assessment on such property shall include the entire year in which the land is classified under this subsection (c). Any person who is denied such classification shall have the same rights and remedies for appeal and relief as are provided taxpayers for any action of assessors of property.

(5) Should the use or ownership of the property change so that it no longer qualifies under this subsection (c), then the property owner shall have the duty of informing the assessor of property. Upon discovering that a property no longer qualifies for classification under this subsection (c), the assessor of property shall reclassify the property and shall value the property according to its current market value for subsequent tax years. In the event such change in use or ownership does not timely come to the attention of the assessor of property, and upon the assessor discovering that the property no longer

qualifies, such reclassification shall affect each year that the property has failed to qualify, and the taxpayer shall be liable for the difference in taxes, including penalty and interest.

(6) It is the legislative intent that the twenty-five-year time period is an integral part of this subsection (c). If this provision is held by a court of competent jurisdiction to be an unreasonable classification or otherwise declared unconstitutional, then this entire subsection (c) shall be null and void.

(d) The general assembly finds that due to the abundance of limestone, sand and gravel in this state and the difficulty in valuing the contributory interest in limestone, sand and gravel that such contributory interest in limestone, sand and gravel shall be deemed to have no value for property tax purposes. This does not affect the commercial classification of real property used for quarry purposes.

(e) The general assembly finds that any public utility property or commercial and industrial property that generates electricity using wind as its energy source is generally capable of only generating approximately one-third (1/3) of the electricity that competing generation properties are capable of producing using coal or other conventional energy sources and that the commercially competitive disadvantage of such generation property due to its dependence on the intermittent nature of wind as an energy source similarly evidences that its sound, intrinsic, and immediate economic value for all purposes under this chapter should not initially exceed one-third (1/3) of its total installed costs. The general assembly further finds that, unless the findings are considered in the determination of the sound, intrinsic, and immediate economic value of such property for all purposes under this chapter, investment in property to generate electricity using wind as its energy source will be unreasonably discouraged, denying the citizens of this state the environmental benefits associated with the greater use of wind, as a renewable energy source, for electric power generation. The assessor of property, in assessing any such commercial and industrial property, or the comptroller, in assessing any such public utility property, that generates electricity using wind as its energy source, shall take these findings by the general assembly into account in determining the sound, intrinsic, and immediate economic value of such property, when the property is initially appraised and each time the property is reappraised.

[Acts 1973, ch. 226, § 6; 1974, ch. 771, § 8; 1976, ch. 782, § 13; 1977, ch. 262, § 1; T.C.A., § 67-606; Acts 1987, ch. 430, §§ 2-4; 1994, ch. 786, § 1; 1997, ch. 195, §§ 1, 2; 2003, ch. 377, § 1.]

67-5-801. Classification and rate of assessment. —

(a) For the purposes of taxation, all real property, except vacant or unused property or property held for use, shall be classified according to use and assessed as provided in this section:

(1) **Public Utility Property.** Public utility property shall be assessed at fifty-five percent (55%) of its value;

(2) **Industrial and Commercial Property.** Industrial and commercial property shall be assessed at forty percent (40%) of its value;

(3) **Residential Property.** Residential property shall be assessed at twenty-five percent (25%) of its value; and

(4) **Farm Property.** Farm property shall be assessed at twenty-five percent (25%) of its value.

(b) Where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages, then it shall be apportioned among the subclasses according to guidelines established by rules and regulations of the state board of equalization.

(c) (1) All real property that is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

(A) Immediate prior use, if any;

(B) Location;

(C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;

(D) Other legal restrictions on use;

(E) Availability of water, electricity, gas, sewers, street lighting, and public services;

(F) Size;

(G) Access to public thoroughfares; and

(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2) If, after consideration of all such factors, any such real property does not fall within any of the definitions and classifications in this section, such property shall be classified and assessed as farm or residential property.

[Acts 1973, ch. 226, § 6; T.C.A., § 67-611.]

**BLOUNT COUNTY
PROPERTY ASSESSOR'S OFFICE**

**DISCUSSION AND POSSIBLE ACTION
REGARDING RECLASSIFICATION
BY THE PROPERTY ASSESSOR
OF PROPERTIES REZONED
COMMERCIAL**

**PREPARED FOR
THE BLOUNT COUNTY COMMISSION
359 COURT STREET
MARYVILLE, TENNESSEE
37804**

**BY
MIKE MORTON, PROPERTY ASSESSOR,
Barry Mathis, Assistant Property Assessor**

(865) 273-5850



Blount County Property Assessor
Mike Morton, Property Assessor
351 Court Street
Maryville, TN 37804
Ph: (865) 273-5850
Fax: (865) 273-5866

October 5, 2007

The Blount County Board of Commissioners
Dr. Robert L. Ramsey
Chairman
359 Court Street
Maryville, Tennessee 37804-5906

RE: Discussion and Possible Action Regarding Reclassification By The Property Assessor Of
Properties Rezoned Commercial

Dear Dr. Robert L. Ramsey:

In preparation of the October 9, Commission meeting, we have gathered the following information as it relates to the above captioned subject. The intended user is the Blount County Board of Commissioners.

The report that follows summarizes our research and conclusions. We hope the Commission will find this report to be informative and provide some insight on the Property Assessor's Office statutory responsibility in regards to classification of property in Blount County.

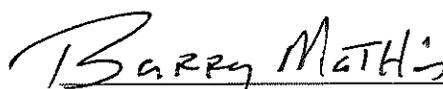
We have provided a written opinion from the Division of Property Assessments, sections of the Tennessee Code Annotated, some Market Place examples and various Court Decisions which are currently pending or decisions that have been rendered.

All Market Place decisions made by the office is subject to appeal and a variety of market areas with specific facts can produce different outcomes, therefore we have provided in this report three examples of market situations in which classification decisions have been made regardless of zoning regulations.

In conclusion, we are confident that our classification decisions are in accordance with the guidelines and the Tennessee Code Annotated laws that we are obligated to uphold and any situations that arise that is contrary to these decisions will be addressed and changed as deemed appropriate.

Respectfully submitted,

Mike Morton, Blount County Property Assessor


Barry Mathis, Assistant Property Assessor

POINTS OF EMPHASIS

1. The Property Assessor's Office can't speculate because of T.C.A. 67-5-601, therefore we can only react to the market place.
2. **Appraisal** = Fair market value **Classification** = According to use
3. Proper value and classification is an interpretation of the market and all factors must be considered as opposed to stimulating change to the market place.
4. None of the economic factors are allowed to be dominant over one another unless the legislative branch chooses to apply use restrictions to their zoning regulations.
5. **Rationale:** This stops a government force from zoning the whole county commercial including subdivisions for the sake of raising revenue without public debate.
6. In order to change vacant land to a 40% classification, the market that is being interpreted must be clearly (obviously) defined.
7. Once a pattern of commercial development begins unfolding and is clearly (obviously) defined we will at the appropriate time capture the proper value and classification.
8. Blount County is progressing but still has a lot of rural nature and isn't totally urban, therefore our rural thoroughfares have to be clearly (obviously) defined before we act.

GLOSSARY OF TERMS

- Immediate -** of or relating to the here and now
current/the present
- Most -** the majority, greatest amount, greatest number
- Suitable -** similar, matching, conforming, adapted to a use
- Economic -** of or relating to an economy (market), having practical
or industrial significance or uses
- Use -** the fact or state of being used
the ability or power to use something
to put into action or service
- Area -** a geographic region (marketing group)

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Introduction

John Allen, Staff Attorney
Division of Property Assessments

Please be advised of our official request reduced to writing versus our numerous prior verbal conversations concerning an issue in Blount County. This involves reclassification of property that is vacant from a 25% assessment to a 40% assessment. The requested reclassification is due to property presently zoned residential, being considered for commercial zoning.

The properties that are most affected are those located in an area of the county considered RAC – Rural Arterial Commercial which are beginning to show commercial development along their respective thoroughfares. These are owner initiated requests that seem to be ahead of the market and may already have potential buyers. If the request for rezoning is approved all property owner use rights are available.

We have a scheduled work shop with our Legislative Branch on this very important matter and need the legal advice from the Division of Property Assessments on when or if we can make this classification change according to the statutes that we are bound to uphold. Please review the following list of questions and respond as deemed appropriate:

1. Can these properties be immediately reclassified to 40% simply due to a zoning change by the Legislative Branch?
2. Can single parcels be reclassified by themselves or must all the vacant properties in this market group be considered for reclassification?
3. What is the proper interpretation of TCA 67-5-601, 67-5-602, and particularly 67-5-801 as it relates to this matter and set of questions?
4. Could you please elaborate on the wording in 67-5-801 (c) (1) “of held for use and classified according to its immediate most suitable economic use”? How is it to be interpreted and how might it apply to this scenario?
5. If we were to make the change in assessment simply due to a Legislative Resolution, can we defend it in an appeal?
6. If the request for rezoning is approved by the Legislative Branch then what is the appropriate time to reclassify the property to 40%?

Finally, I faxed you a copy of a proposed resolution on this subject and I would like your comments concerning the wording as it relates to all properties in Blount County impacted by commercial zoning.

Thank you for your continuing assistance and I eagerly anticipate your response.

Barry Mathis
Assistant Property Assessor



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF PROPERTY ASSESSMENTS

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John G. Morgan
Comptroller

September 27, 2007

BLOUNT COUNTY ASSESSOR OF PROPERTY

Attn: Honorable Mike Morton
351 Court Street
Maryville, Tennessee 37804-5906

Honorable Mike Morton:

This letter is being written in response to your request for an opinion to several questions as it concerns vacant land being reclassified from a residential or farm property classification, which is assessed at twenty-five percent (25%) of its value, to a commercial property classification, which is assessed at forty percent (40%) of its value. The owners of certain vacant parcels in Blount County have been requesting the zoning board to zone their parcels as commercial. Currently the parcels are classified as either farm or residential. Without knowing all of the facts or having any specific knowledge of the area in which these vacant parcels are located, answers to some of the questions below are general for the reason that particular facts to any situation can produce different outcomes.

1. Can vacant parcels be immediately reclassified to 40% simply due to a zoning change by the Legislative Branch?

No. Generally speaking, property is assessed and classified according to its use as of January 1, the assessment date. Any zoning change made to vacant property after January 1 would not take effect, at the earliest, until the following assessment date. Whether such zoning classification would take effect in subsequent years would depend upon the satisfaction of those factors provided in T.C.A. section 67-5-801(c) and the market.

2. Can single vacant parcels be reclassified by themselves or must all the vacant parcels in a market group be considered for reclassification?

All of the vacant properties in a certain market group would have to be considered for reclassification, **regardless of zoning**. T.C.A. section 67-5-801(c) provides for certain factors that must be considered in determining the classification of vacant parcels. The most important language found in subsection (c) is "immediate most suitable economic use." See T.C.A. section 67-5-801(c)(1), (c)(1)(C), and (c)(1)(H). However, please be reminded that the "immediate most suitable economic use" is determined after considering **all** of the factors in subsection (c)(1)(A) – (H). The consideration of these factors helps in determining the "immediate most suitable economic use" of vacant parcels. These factors are used in conjunction with the actual use of surrounding properties to help determine and interpret the market. For example, if commercial development infiltrates a certain area, vacant parcels currently classified as farm property or residential property could be classified as commercial property as of January 1, the assessment date. The reasoning being that the "immediate most suitable economic use" of the property would likely be commercial. The lack of commercial development, or where such development is non-existent, may

prevent certain vacant, or unused, parcels from being classified as commercial property even though such vacant parcels are zoned commercial. Again, the reasoning being that such classification may not represent the "immediate most suitable economic use" for those vacant parcels. The market, i.e., how other surrounding properties are actually being used, helps determine the "immediate most suitable economic use" of vacant property.

3. What is the proper interpretation of T.C.A. sections 67-5-601, 67-5-602, and particularly 67-5-801 as it relates to this matter and set of questions?

T.C.A. sections 67-5-601 and 602 provide guidance for how property is to be valued. Generally speaking, the value of all property is to "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." T.C.A. section 67-5-601(a). T.C.A. section 67-5-602(b) provides factors that are to be included in manuals for determining the value of real property. The sale of vacant lands in a particular market area will assist in determining the value of such vacant tracts.

T.C.A. section 67-5-801 provides for how property should be classified. Property is classified according to use. For example, if property is zoned commercial but is used as a residence, then such property would be classified as residential property. However, classification for property that is vacant, or unused, or held for use must be determined by those factors provided in T.C.A. section 67-5-801(c) and the market. As already previously explained in the answer to question 2, the factors found in 67-5-801(c) and the market help determine the "immediate most suitable economic use" of vacant parcels.

4. Could you please elaborate on the wording in T.C.A. section 67-5-801(c)(1) "vacant, or unused, or held for use" and "classified according to its immediate most suitable economic use"? How is it to be interpreted and how might it apply to this scenario?

See answers to questions 2 and 3.

5. If we were to make the change in assessment or classification simply due to a County Resolution, can we defend it in an appeal?

The County Commission does not have the authority nor can it pass a resolution to mandate how property is to be valued or classified in a manner that would be considered in contravention to Tennessee law. Tennessee law already provides for how property is to be valued and classified for assessment purposes. Any assessment or classification made in contravention of Tennessee law is not defensible.

6. If the request for rezoning is approved by the County Legislative Branch, then what is the appropriate time to reclassify the property to 40%?

See answers to questions 1 and 2.

In addition, you have asked for comments concerning the wording of the proposed resolution regarding vacant parcels and their classification. The proposed resolution appears to merely request the Blount County Assessor of Property to classify "all vacant or unused property . . . which is zoned commercial or industrial to be classified as commercial and industrial provided said properties meet the requirements of T.C.A. §67-5-801(c)(1)." This proposed resolution appears to recite the law that all assessors of property in the State of Tennessee must follow.

Please be reminded that if any governmental entity believes that (1) property has been erroneously classified or subclassified for purposes of taxation, (2) property has not been included on the assessment lists, or (3) property has been assessed on a basis of appraised values which are less than the basis of value provided for in part 6 [of chapter 5 of title 67], then such governmental entity has the right to make a complaint before the assessor of property and county board of equalization. T.C.A. section 67-5-1407(b)(1)(A) – (C).

If you have any further questions, please feel free to contact me at (615) 401-7787.

Sincerely,



John C. E. Allen, Staff Attorney

JCEA/jcea

cc: Robert T. Lee, General Counsel

**Tennessee
Code
Annotated
Information**

PART 6 CLASSIFICATION AND ASSESSMENT - VALUATION

67-5-601. General policy - Legislative findings.

(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 values, and when appropriate, subject to the provisions of the Agricultural, Forest and Open Space Land Act of 1976, codified in part 10 of this chapter.

(b) It is the legislative intent hereby declared that no appraisal hereunder shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.

(c) (1) The general assembly finds that the increased market value of certain residential property zoned for commercial use has caused an increase in taxes to the extent that citizens are faced with the necessity of selling dwelling houses in which they have lived for many years. The general assembly finds that present use valuation has been extended to others, and is warranted under certain circumstances to relieve the burden of increased taxation to residential owners.

(2) It is the policy of this state that the owners of residential property who have lived on that property for a significant period of time should be allowed to continue to live on that property without a disproportionate increase in taxes due to the property being zoned for commercial use.

(3) For the purposes of this subsection (c):

(A) "Dwelling house" means a residence occupied by the owner of an estate in that property, with such residence being zoned for commercial use, used solely for residential purposes, and occupied by that owner or a person to whom the current owner is a lineal descendant for a period of twenty-five (25) years or more, together with the real estate upon which it is situated up to a maximum five (5) acres; and

(B) "Owner" means a citizen and resident of Tennessee who occupies the citizen's or resident's dwelling house, as opposed to occupying any other residence, for at least nine (9) months out of each calendar year.

(4) Any owner of a dwelling house may make application to the assessor of property of the county in which the property is located for its classification under this subsection (c). Property which has been determined by the assessor of property to qualify under this subsection (c) shall be valued for ad valorem tax purposes at its market value for residential purposes. The

assessment on such property shall include the entire year in which the land is classified under this subsection (c). Any person who is denied such classification shall have the same rights and remedies for appeal and relief as are provided taxpayers for any action of assessors of property.

(5) Should the use or ownership of the property change so that it no longer qualifies under this subsection (c), then the property owner shall have the duty of informing the assessor of property. Upon discovering that a property no longer qualifies for classification under this subsection (c), the assessor of property shall reclassify the property and shall value the same according to its current market value for subsequent tax years. In the event such change in use or ownership does not timely come to the attention of the assessor of property, and upon the assessor discovering that the property no longer qualifies, such reclassification shall affect each year that the property has failed to qualify, and the taxpayer shall be liable for the difference in taxes, including penalty and interest.

(6) It is the legislative intent that the twenty-five-year time period is an integral part of this subsection (c). If this provision is held by a court of competent jurisdiction to be an unreasonable classification or otherwise declared unconstitutional, then this entire subsection shall be null and void.

(d) The general assembly finds that due to the abundance of limestone, sand and gravel in this state and the difficulty in valuing the contributory interest in limestone, sand and gravel that such contributory interest in limestone, sand and gravel shall be deemed to have no value for property tax purposes. This does not affect the commercial classification of real property used for quarry purposes.

(e) The general assembly finds that any public utility property or commercial and industrial property that generates electricity using wind as its energy source is generally capable of only generating approximately one-third (1/3) of the electricity that competing generation properties are capable of producing using coal or other conventional energy sources and that the commercially competitive disadvantage of such generation property due to its dependence on the intermittent nature of wind as an energy source similarly evidences that its sound, intrinsic, and immediate economic value for all purposes under this chapter should not initially exceed one-third (1/3) of its total installed costs. The general assembly further finds that, unless the aforementioned findings are considered in the determination of the sound, intrinsic, and immediate economic value of such property for all purposes under this chapter, investment in property to generate electricity using wind as its energy source will be unreasonably discouraged, denying the citizens of this state the environmental benefits associated with the greater use of wind, as a renewable energy source, for electric power generation. The assessor of property in assessing any such commercial and industrial property or the comptroller in assessing any such public utility property, which generates electricity using wind as its energy source, shall take these findings by the general assembly into account in determining the sound, intrinsic, and immediate economic value of such property, when the property is initially appraised and each time the property is reappraised.

[Acts 1973, ch. 226, § 6; 1974, ch. 771, § 8; 1976, ch. 782, § 13; 1977, ch. 262, § 1; T.C.A., § 67-606; Acts 1987, ch. 430, §§ 2-4; 1994, ch. 786, § 1; 1997, ch. 195, §§ 1, 2; 2003, ch. 377, § 1.]

Compiler's Notes. Acts 1997, ch. 195, § 3 provided that that act, which amended this section, shall apply to the 1997 tax year and subsequent years.

Acts 2003, ch. 377, § 2 provided that the act shall apply to property assessed for tax year 2003 and tax years thereafter.

Amendments. The 2003 amendment added (e).

Effective Dates. Acts 2003, ch. 377, § 2. June 23, 2003.

Cross-References. Basis of valuation, Tenn. Const., art. II, § 28.

Section to Section References. This part is referred to in §§ 4-3-1804, 12-1-204, 67-5-1008, 67-5-1009, 67-5-1407.

This section is referred to in §§ 11-14-201, 11-14-202, 11-15-107, 67-5-602.

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 35.

Law Reviews. Ad Valorem Taxation of Agricultural Land in Tennessee, 4 Mem. St. U.L. Rev. 127.

Attorney General Opinions.

Valuation of property that generates electricity using wind, OAG 03-068 (5/27/03).

Cited: State ex rel. Webster ex rel. Strader v. Word, 508 S.W.2d 539 (Tenn. 1974); United States v. Metropolitan Gov't, 808 F.2d 1205 (6th Cir. 1987); In re All Assessments, 67 S.W.3d 805, 2001 Tenn. App. LEXIS 683 (Tenn. Ct. App. 2001).

NOTES TO DECISIONS

Analysis

1. Construction.
2. Surface Value and Mineral Value.
3. Constitutional Questions.
4. Timberland.

1. Construction.

The value arrived at under T.C.A. § 67-5-1008 is equal to the value that would result from T.C.A. § 67-5-601. Marion County v. State Bd. of Equalization, 710 S.W.2d 521 (Tenn. Ct. App. 1986).

2. Surface Value and Mineral Value.

In general terms, surface values are determined without regard to mineral value and without regard to the value of growing crops, which, by statutory mandate, includes trees. The mineral value must then be determined and the surface value must, in order to obtain true equalization, be further reduced by the value of the underlying minerals. *Richardson v. Tennessee Assmt. Appeals Comm'n*, 828 S.W.2d 403 (Tenn. Ct. App. 1991).

3. Constitutional Questions.

Plaintiff's argument that he was denied equal protection under the law was without merit where the appraisal and assessment of his properties, using the direct comparable sales method, was in compliance with T.C.A. § 67-5-601(a). *Willamette Indus., Inc. v. Tennessee Assmt. Appeals Comm'n*, 11 S.W.3d 142 (Tenn. Ct. App. 1999).

4. Timberland.

There is no authority that requires the residual method of appraisal be utilized in the valuation of timberland; on the contrary, no authority suggests that any single method is mandated, to the exclusion of all others. *Willamette Indus., Inc. v. Tennessee Assmt. Appeals Comm'n*, 11 S.W.3d 142 (Tenn. Ct. App. 1999).

COLLATERAL REFERENCES

Valuation <key> 371.346.

67-5-602. Assessment guided by manuals - Factors for consideration.

(a) Except as provided in § 67-5-601(c), in determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions of, the appropriate assessment manuals issued by the division of property assessments and approved by the state board of equalization. In the preparation of the manual, the division of property assessments and the state board of equalization shall consult with the United States forest service and the state forester in establishing the guidelines to be used in determining the value of forestland.

(b) For determining the value of real property, such manuals shall provide for consideration of the following factors:

- (1) Location;
- (2) Current use;
- (3) Whether income bearing or non-income bearing;

- (4) Zoning restrictions on use;
- (5) Legal restrictions on use;
- (6) Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
- (7) Inundated wetlands;
- (8) Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land. As used in this subdivision (b)(8), "crops" includes trees; and
- (9) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

(c) (1) For determining the value of industrial, commercial, farm machinery and other personal property, such manuals shall provide for consideration of the following factors:

- (A) Current use;
- (B) Depreciated value;
- (C) Actual value after allowance for obsolescence; and
- (D) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

(2) Notwithstanding the foregoing, all farm personal property and also all household and kitchen furniture, tableware, musical instruments, wearing apparel, private passenger motor vehicles, jewelry and other personal property of similar character used in the taxpayer's own household, together with all intangible property, including bank accounts, of the taxpayer, may be assumed prima facie by the assessor of property to be of a value not in excess of seven thousand five hundred dollars (\$7,500) per individual and fifteen thousand dollars (\$15,000) for jointly owned property held by husband and wife in the absence of any tax return or schedule to the contrary.

[Acts 1973, ch. 226, § 6; 1974, ch. 771, § 8; 1976, ch. 782, § 13; 1977, ch. 262, § 1; T.C.A., § 67-606; Acts 1987, ch. 430, § 1; 1988, ch. 831, § 1; 1995, ch. 362, § 1.]

Cross-References. Forms, schedules, and rules, § 67-5-505.

Section to Section References. This section is referred to in §§ 11-14-201, 11-14-202, 11-15-107.

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 35.

Attorney General Opinions. Exclusion from ad valorem taxation of personal property of individuals, OAG 00-062 (4/3/00).

Cited: United States v. Metropolitan Gov't, 808 F.2d 1205 (6th Cir. 1987).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Condition of Title Irrelevant.
3. Life Tenancies.
4. Restrictions Running with Land.
5. Value Attaches to Property.
6. Classification for Assessment, Not Valuation.
7. Surface Value and Mineral Value.

1. Constitutionality.

Tenn. Const., art. II, § 28 requires the reclassification of all property for ad valorem tax purposes and valuation at 100 percent of full market value, and the action of taxing authorities in valuing public utility properties at full value and other properties at less than full value violated the equal protection clause of the fourteenth amendment and entitled the public utility taxpayers to obtain equalization. *Louisville & N.R.R. v. Public Serv. Comm'n*, 631 F.2d 426 (6th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1418, 67 L. Ed. 2d 384 (1981).

2. Condition of Title Irrelevant.

In assessing the value of land, account should not be taken of the condition of the title of the alleged land owner or of any cloud upon it; nor should account be taken of the possibility that he would be unwilling to sell it because of an understanding with his grantor, or of the possibility that a purchaser would be put on notice that this grantor has an equitable interest in the property. The law requires an assessment of the value, not of the purported owner's title, but of the land; the assessed value of the land represents the value of all interest in the land. *Hoover v. State Bd. of Equalization*, 579 S.W.2d 192 (Tenn. Ct. App. 1978).

3. Life Tenancies.

The full value of the land is taxed in the hands of the life tenants, notwithstanding the fact that a life tenant has less than a full and unrestricted ownership of the land. *Hoover v. State Bd. of Equalization*, 579 S.W.2d 192 (Tenn. Ct. App. 1978).

4. Restrictions Running with Land.

In placing a valuation on the property, this section recognizes the existence of restrictions and encumbrances that affect the value of the fee simple estate, i.e., zoning restrictions, easements, etc., which are restrictions that run with the land, rather than those that are personal to the parties in possession. *Hoover v. State Bd. of Equalization*, 579 S.W.2d 192 (Tenn. Ct. App. 1978).

A private individual could not self-impose a restriction whereby he might be able to limit or avoid paying his just share of the ad valorem taxes due to government nor can a corporation. *Hoover v. State Bd. of Equalization*, 579 S.W.2d 192 (Tenn. Ct. App. 1978).

5. Value Attaches to Property.

For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession. *Hoover v. State Bd. of Equalization*, 579 S.W.2d 192 (Tenn. Ct. App. 1978).

6. Classification for Assessment, Not Valuation.

Tennessee has chosen to classify properties for assessment purposes, not for valuation purposes. *Louisville & N.R.R. v. Public Serv. Comm'n*, 631 F.2d 426 (6th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1418, 67 L. Ed. 2d 384 (1981).

7. Surface Value and Mineral Value.

In general terms, surface values are determined without regard to mineral value and without regard to the value of growing crops, which, by statutory mandate, includes trees. The mineral value must then be determined and the surface value must, in order to obtain true equalization, be further reduced by the value of the underlying minerals. *Richardson v. Tennessee Assmt. Appeals Comm'n*, 828 S.W.2d 403 (Tenn. Ct. App. 1991).

DECISIONS UNDER PRIOR LAW.

Analysis

1. Evidence Supporting Valuation.
2. "Fair Voluntary Sale."
3. Equalization of Assessments.
4. Improvements.

1. Evidence Supporting Valuation.

Where a city's charter stipulated that assessments made by the county should be the basis for city taxes on the same property, it was proper to introduce in evidence the county's assessment in order to determine the value to be used in making the special assessments. *Drimmen v. City of Maryville*, 9 Tenn. App. 151 (1927).

2. "Fair Voluntary Sale."

In determining whether or not a sale was a "fair voluntary sale" in the meaning of former statute the board of equalization could look to all the facts surrounding such sale and in connection therewith may consider its personal knowledge of the property involved and any other information, facts or circumstances before it which in its judgment bore upon the question of "actual cash value." *Treadwell Realty Co. v. City of Memphis*, 173 Tenn. 168, 116 S.W.2d 997 (1938).

Where the board of equalization had before it the assessment records of all city property including property adjacent or contiguous to that of the complaining taxpayer together with the sworn statement of the tax assessor with reference to such records as required by statute and where there was nothing in the record to show complaint by the owners, this was some evidence to support the valuation at which the taxpayer's property was appraised. *Treadwell Realty Co. v. City of Memphis*, 173 Tenn. 168, 116 S.W.2d 997 (1938).

3. Equalization of Assessments.

State board of equalization had authority to increase assessment level of entire county upon petition of railway company and service on county executive, county board of equalization and county tax assessor in accordance with state board's rules of practice and procedure without serving individual taxpayers in county and upon evidence to effect that public service commission had exercised its judgment in performing statutory duty to assess railway property at actual cash value while other property in county was assessed at approximately ten percent of actual value. *Southern Ry. v. Clement*, 57 Tenn. App. 54, 415 S.W.2d 146 (1966).

The taxpayers and the county had the right to have each property evaluated at its actual value at the time of assessment, and to have the assessment be at least that minimum percentage of actual value as required by law. *Polk County v. State Bd. of Equalization*, 484 S.W.2d 49 (Tenn. Ct. App. 1972).

4. Improvements.

Improvements are to be considered in arriving at the value of the property but are not to be assessed separately. *Garner v. Rhea Realty Corp.*, 494 S.W.2d 783 (Tenn. Ct. App. 1971).

Incomplete improvements to real estate may be assessed as personal property on the basis of the fair value of the materials used therein until such time as the improvement is completed, at which time it must be assessed as real estate. *State ex rel. Russell v. LaManna*, 498 S.W.2d 891 (Tenn. 1973).

COLLATERAL REFERENCES

Sale price of real property as evidence in determining value for tax assessment purposes. 89 A.L.R.3d 1126.

Valuation <key> 371.346.

PART 8
CLASSIFICATION AND ASSESSMENT - REAL PROPERTY

67-5-801. Classification and rate of assessment.

(a) For the purposes of taxation, all real property, except vacant or unused property or property held for use, shall be classified according to use and assessed as provided in this section:

(1) *Public Utility Property.* Public utility property shall be assessed at fifty-five percent (55%) of its value;

(2) *Industrial and Commercial Property.* Industrial and commercial property shall be assessed at forty percent (40%) of its value;

(3) *Residential Property.* Residential property shall be assessed at twenty-five percent (25%) of its value; and

(4) *Farm Property.* Farm property shall be assessed at twenty-five percent (25%) of its value.

(b) Where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages, then it shall be apportioned among the subclasses according to guidelines established by rules and regulations of the state board of equalization.

(c) (1) All real property which is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

(A) Immediate prior use, if any;

(B) Location;

(C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;

(D) Other legal restrictions on use;

(E) Availability of water, electricity, gas, sewers, street lighting, and public services;

(F) Size;

(G) Access to public thoroughfares; and

(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2) If, after consideration of all such factors, any such real property does not fall within any of the foregoing definitions and classifications, such property shall be classified and assessed as farm or residential property.

[Acts 1973, ch. 226, § 6; T.C.A., § 67-611.]

Cross-References. Classification, Tenn. Const., art. II, § 28.

Classification and assessment of insurance companies, title 67, ch. 5, part 12.

Classification and assessment of utilities and carriers, title 67, ch. 5, part 13.

Classification of agricultural, forest and open space land, title 67, ch. 5, part 10.

Section to Section References. This section is referred to in § 65-4-101.

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 34.

Law Reviews. Recovering Erroneously Paid Property Taxes in Tennessee: An Epic Journey, 10 Mem. St. U.L. Rev. 279.

Cited: United States v. Hawkins County, 859 F.2d 20 (6th Cir. 1988); CSX Transp., Inc. v. Tennessee State Bd. of Equalization, 964 F.2d 548 (6th Cir. 1992); Southern Ry. v. Stair, 801 F. Supp. 37 (W.D. Tenn. 1992); Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139 (Tenn. 1993).

NOTES TO DECISIONS

1. According to Use.

Classification "according to use" requires property to be assessed to the owner according to the actual use made of the property and not the owner's use. Crown Enters., Inc. v. State Bd. of Equalization, 543 S.W.2d 583 (Tenn. 1976).

COLLATERAL REFERENCES

Income or rental value as a factor in evaluation of real property for purpose of taxation. 96 A.L.R.2d 666.

Tax assessor's civil liability to taxpayer for excessive or improper assessment of real property. 82 A.L.R.2d 1148.

Valuation of real property <key> 371.348-349.

[Acts 1973, ch. 226, § 10; T.C.A., § 67-804.]

COLLATERAL REFERENCES

Review, correction, or setting aside of assessment <key> 371.451-493.50.

67-5-1406. Hearing officers.

(a) In the event that it is determined by the state board of equalization that the number of complaints made to any county board of equalization is sufficiently numerous to justify such action, the county board may appoint one (1) or more hearing officers, who shall be approved by the state board of equalization, to conduct preliminary hearings and to make investigations regarding complaints before the board.

(b) The hearing officers shall assist the county board and prepare proposed findings of fact and conclusions and recommend the same to the county board.

(c) The county board may adopt any recommendation of such hearing officers as its final decision; provided, that any property owner who desires to be heard directly by the county board is given the opportunity to be heard by the board.

[Acts 1973, ch. 226, § 10; T.C.A., § 67-805.]

COLLATERAL REFERENCES

Review, correction, or setting aside of assessment <key> 371.451-493.50.

67-5-1407. Complaints to county board of equalization.

(a) (1) Any owner of property or taxpayer liable for taxation in the state has the right by personal appearance, or by the personal appearance of the duly authorized agent of the owner of the property, which agency shall be evidenced by a written authorization executed by the owner or taxpayer, or by representation by an attorney, to make complaint before the county board of equalization on one (1) or more of the following grounds:

(A) Property under appeal or protest by the taxpayer has been erroneously classified or subclassified for purposes of taxation;

(B) Property under appeal or protest by the taxpayer has been assessed on the basis of an appraised value that is more than the basis of value provided for in part 6 of this chapter; and

(C) Property other than property under appeal or protest by the taxpayer has been assessed on the basis of appraised values which are less than the basis of value provided for in part 6 of this chapter.

(2) Upon such complaint being made before the county board, it may hear any evidence or witness offered by the complainant, or may take such steps as it may deem material to the investigation of the complaint.

(b) (1) Any local governmental entity has the right to make a complaint before the assessor of property and county board of equalization on the value of property within the local governmental entity on one (1) or more of the following grounds:

(A) The property has been erroneously classified or subclassified for purposes of taxation;

(B) The property has not been included on the assessment lists; and

(C) The property has been assessed on the basis of appraised values which are less than the basis of value provided for in part 6 of this chapter.

(2) Upon complaint by the local governmental entity, the county board of equalization shall give the property owner at least five (5) days' notice of a hearing to be held before the board; the notice shall be sent by United States mail to the last known address of the property owner.

(c) The county board may hear any evidence or witnesses offered by the local governmental entity or owner or may take such steps as it may deem material to the investigation of the complaint.

(d) When the assessor of property or the county board of equalization requests from the owner, or the owner's duly authorized agent, specific data regarding the property that is not readily available through public records and is necessary to make an accurate appraisal of the property in question, and such owner or duly authorized agent fails, refuses or neglects to supply this data in a timely manner for the assessor of property or county board of equalization to study and consider, the owner shall thereby forfeit the owner's right to introduce information concerning the property requested by the assessor of property or any local board of equalization, but denied by the lawful owner or the owner's duly authorized agent on appeal to the state board of equalization.

(e) (1) Notwithstanding the provisions of this section to the contrary, in any county having a population of not less than seven hundred seventy thousand (770,000) nor more than seven hundred eighty thousand (780,000) according to the 1980 federal census or any subsequent federal census, any taxpayer, or owner of property subject to taxation in the state, has the right to make complaint before the county board of equalization on one (1) or more of the following grounds:

(A) The property under complaint has been erroneously classified or subclassified or

erroneously assessed for purposes of taxation other than as provided in § 67-5-212;

(B) The property under complaint has been assessed on the basis of an appraised value that is more than the basis of value provided for in part 6 of this chapter; and

(C) Property other than the property under complaint has been assessed on the basis of appraised values that are less than the basis of value provided for in part 6 of this chapter.

(2) Any taxpayer, or owner, has the right to appear in person before any county board of equalization, or by an agent having written authorization, by an attorney, by an agent who is registered with the state board of equalization, or by any member of the taxpayer's or owner's immediate family. Any county board may permit written appearance and in that event, any subsequent appeal to the state board of equalization shall be limited to those grounds made by written appearance before the county board.

(3) In the event there may be duplicate appeals filed on any parcel or should the board have reason to believe that representation is not duly authorized, the board may require from any agent, or other representative, written authorization signed by the taxpayer.

(4) No agent or other representative shall file an appeal before the county or state boards of equalization without first obtaining written authorization from the taxpayer.

[Acts 1973, ch. 226, § 10; 1974, ch. 644, § 2; 1975, ch. 171, § 13; T.C.A., § 67-806; Acts 1986, ch. 585, §§ 1, 2; 1989, ch. 419, § 1; 1998, ch. 1066, §§ 1-3, 7.]

Compiler's Notes. For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Section to Section References. This section is referred to in §§ 67-5-903, 67-5-1409, 67-5-1412, 67-5-1514.

Law Reviews. Recovering Erroneously Paid Property Taxes in Tennessee: An Epic Journey, 10 Mem. St. U.L. Rev. 279.

The Proper Scope of Nonlawyer Representation in State Administrative Proceedings: A State Specific Balancing Approach, 43 Vand. L. Rev. 245 (1990).

Attorney General Opinions. Authority to terminate funding for regular and special sessions of county boards of equalization, OAG 96-094 (7/29/96).

Requirement of written taxpayer authorization for taxpayer representatives, OAG 99-054 (3/9/99).

Cited: West Coal Corp. v. State Bd. of Equalization, 649 S.W.2d 595 (Tenn. Ct. App. 1983); In re Washington Mfg. Co., 120 Bankr. 918 (Bankr. M.D. Tenn. 1990).

NOTES TO DECISIONS

Analysis

1. In General.
2. Constitutional Requirements.

1. In General.

Any taxpayer, or owner of property liable for taxation in the state, is authorized by this section to make complaint before the county board of equalization on the ground that his property has been erroneously classified, or that his property has been assessed on the basis of an appraised value in excess of market value, or that property other than his own has been assessed on the basis of appraised values that are less than market value. *Louisville & N.R.R. v. Public Serv. Comm'n*, 493 F. Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, 101 S. Ct. 1418, 67 L. Ed. 2d 384 (1981).

2. Constitutional Requirements.

All property must be valued under Tenn. Const., art. II, § 28 at 100 percent of market value, and the failure of the taxing authorities to so value one or more subclasses permits those subclasses whose property is appraised at market value to seek and obtain equalization. *Louisville & N.R.R. v. Public Serv. Comm'n*, 493 F. Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, 101 S. Ct. 1418, 67 L. Ed. 2d 384 (1981).

DECISIONS UNDER PRIOR LAW.

Analysis

1. Grounds for Relief.
2. Increasing Assessments.

1. Grounds for Relief.

The statute afforded a taxpayer relief in the event: (1) Other property than his own had been assessed at less than actual cash value; or (2) Other property had been assessed at less percentage of actual cash value than his own; or (3) His own property had been assessed at more than its actual cash value. *Southern Ry. v. Clement*, 57 Tenn. App. 54, 415 S.W.2d 146 (1966).

2. Increasing Assessments.

Board of equalization was authorized in nonassessment year to entertain action by taxpayer to raise assessments other than his own. *Southern Ry. v. Clement*, 57 Tenn. App. 54, 415 S.W.2d 146 (1966).

COLLATERAL REFERENCES

Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

Review, correction, or setting aside of assessment <key> 371.451-493.50.

67-5-1408. Disposition of complaints.

Upon its consideration of any complaint or other information available, the county board of equalization may make such changes, by way of increase or decrease in assessments, appraised values, or changes in classifications or subclassifications, as in its judgment are proper, just and equitable; provided, that the property owner or owners shall be duly notified by the board of any increase of assessment or change in classification and given an opportunity to be heard.

(1) Such notice shall be given at least five (5) days before the adjournment of the board, and such notice shall include the tax year for which any increase of assessment or change in classification is made.

(2) Notice by United States mail to the last known address shall be deemed sufficient within the meaning of this section.

[Acts 1973, ch. 226, § 10; 1983, ch. 377, § 1; T.C.A., § 67-807(a).]

COLLATERAL REFERENCES

Review, correction, or setting aside of assessment <key> 371.451-493.50.

67-5-1409. Time for completion of board action.

(a) Any action by the county board of equalization during its regular session, except upon consideration of a complaint as provided in § 67-5-1407, shall be completed and the notice of decision and appeal procedure sent no later than five (5) days prior to the date taxes are due, which in the case of counties, taxes are due on the first Monday of October of a tax year.

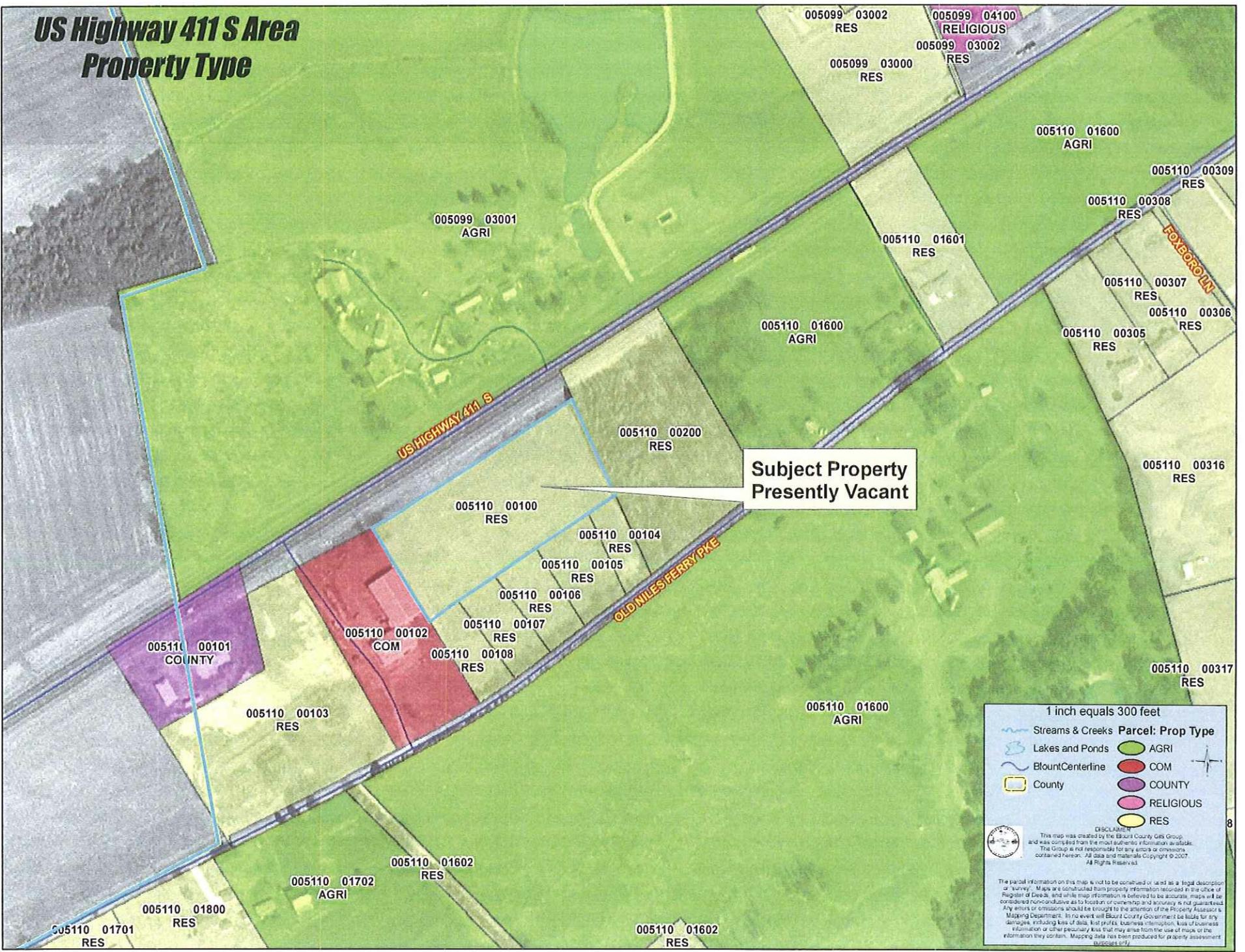
(b) This shall not apply to special sessions or extraordinary actions under the provisions of § 67-1-404, § 67-5-508, § 67-5-1503 [repealed], or other applicable law; nor shall it apply for the year in which a county completes reappraisal pursuant to part 16 of this chapter.

(c) In any county having a population greater than eight hundred ninety thousand (890,000) according to the 2000 federal census or any subsequent federal census, when meeting in special session, except as otherwise determined by a two-thirds (2/3) vote of the county legislative body, the board may act only on an assessment for which an active and timely filed appeal is pending.

Market Place

Information

US Highway 411 S Area Property Type



-20-

Subject Property Presently Vacant

1 inch equals 300 feet

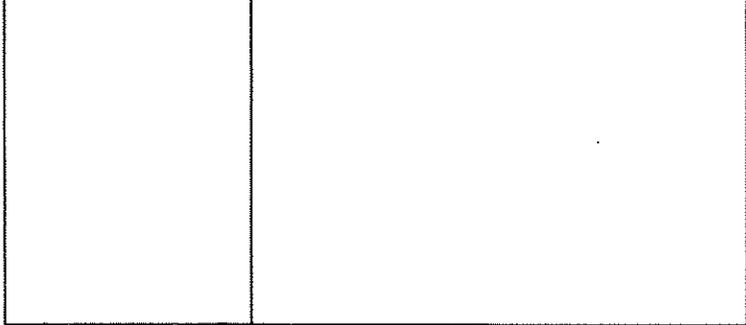
Symbol	Parcel: Prop Type
	Streams & Creeks
	Lakes and Ponds
	Blount Centerline
	County
	AGRI
	COM
	RELIGIOUS
	RES

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STATE OF TENNESSEE REAL ESTATE APPRAISAL CARD

HWY 411 S		SUBDIV. 1	TARWATER & ORR			TAX YEAR	01	110	110	001.00	000	
PROPERTY ADDRESS		BK PG BLOCK LOT 1			2007	DIST	MAP	GROUP	CONTROL MAP	PARCEL	PI S/I	
OWNER'S NAME AND MAILING ADDRESS		SUBDIV. 2	BK PG BLOCK LOT			COUNTY OF BLOUNT		DATE UPDATED		03/24/06		
		ADDITIONAL DESCRIPTION			2056B OLD NILES FERRY PK		DATE PRINTED		10/03/07		CARDS IN PARCEL	1 OF 1
		DIMENSIONS			TOTAL LAND UNITS		3.51		APPRAISED VALUE RECAP			
					DEED ACRES		3.51		IMPROVEMENTS			0
					CALC ACRES		0.0		LAND			95,200
									TOTAL APPRAISAL			95,200
									ASSESSMENT			23,800
									PROPERTY TYPE 00			25%



TOTAL UNITS	SHAPE FACTORS	SIZE	ADJD UNITS	BASE RATE	ADJD BASE RATE	IMPR. TYPE	ACTUAL YEAR BUILT	EFFECTIVE YEAR BUILT
AREA DESCR	% OF RATE	ADJD SQUARE FOOT RATE	AREA RATE	SQUARE FEET	REPLACEMENT COST NEW			

TOTAL AREAS ->	AUX #	BASE #
AGE	DEPRECIATION	REPL COST NEW
NORM FTS	OTHER FTS	DEPR REPL COST
FUNC	ECON	% COND

EX. FEAT/SPEC. BLDG. DESCRIPTION	QUAL	SIZE	UNIT PRICE	UNITS	EFF YR BUILT	ANNUAL DEPR RATE	PERCENT CONDITION	DEPRECIATED VALUE
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								

GENERAL PARCEL DATA											
LAND APPRAISAL	BY	S.S.D.	WARD	E.D.D.	PLAN	OTHER	MARKET	USE	AREA CODE		
08/11/05	34					22			101		
PARC. STAT	DIST	TRM	TOPO	TYPE OWNER	ROAD NO.	ROAD TYPE	CONST. CODE	SUBDV. TRACT	COORDINATES		
1	0	0	0	411	0				N-S		
CENSUS TRACT		BLOCK	FACE	AREA	CON	OPTIONAL	E-W		INTEREST CODE		
GENERAL CARD DATA											
BLDG APPRAISAL	BY	SOURCE	NO. DWELL UNITS	UTILITIES	ZONING	OCC	COND				
			1	1	1	0					
PERMIT NO.	F.H.A. NUMBER	RENTAL SOURCE	RENTAL AMOUNT	RENTAL SCHEDULE							

EX. FEAT/SPEC. BLDG. APPR. DATE	08/11/05	APPR. BY	34	TOTAL CALCULATED EX. FEAT/SPEC. BLDG. VALUE												
LAND DESCRIPTION	DESC CODE	SIZE-DIMENSION	SOIL CLASS	UM	FLD	LOC	SIZE	DEPTH FACTOR	COND FACTOR	UNIT LAND PRICE	ADJD. UNIT LAND PRICE	LAND UNITS	MARKET LAND VALUE	USE COND. FACTORS	LAND USE UNIT PRICE	USE LAND VALUE
1. SM TRAC	03			28	100	100	100	100	100	27,111.97	27,111.97	3.51	95,163			
2.																
3.																
4.																
5.																
6.																
LAND USE CODES		1, 11	2, 13	3, 51	4, 53	LAND TOTAL		THIS CARD		3.51	95,163	THIS CARD				

MARKET DATA												NOTES				
DATE	PRICE	BOOK	PAGE	V/I	INS	Q	DEED TRANSFER	BOOK	PAGE							
1. 10/30/03	120,000	690	776	V	WA	Q	02 28 06	2097	2183	.54AC TO ST FOR R.O.W. 594/717/1-17-97*2.50AC TO 110-1.02 FOR 97*AC CHG BY SURVEY*3.72AC TO 110-1.03 FOR 02*CHG AC 7.04 TO 6.81 FOR 02*.44AC TO 110-1.04, 73AC TO 1.05,.62AC TO 1.06,..59AC TO 1.07,.54AC TO 1.08 FOR 05*						
2.							11 06 03	690	776							
3.							03 15 43	00136	00276							
4.																

21

STATE OF TENNESSEE REAL ESTATE APPRAISAL CARD

STOCK CREEK BLVD		SUBDIV. 1	STOCK CREEK INDUSTRIAL PRK			TAX YEAR	11	009		009	027.20	000	
PROPERTY ADDRESS			BK	PG	BLOCK	LOT	DIST	MAP	GROUP	CONTROL MAP	PARCEL	PI	SA
OWNER'S NAME AND MAILING ADDRESS		SUBDIV. 2					COUNTY OF BLOUNT			DATE UPDATED 03/24/06			
			BK	PG	BLOCK	LOT				DATE PRINTED 10/03/07			
		ADDITIONAL DESCRIPTION				TOTAL LAND UNITS	6.20			CARDS IN PARCEL 1 OF 1			
		DIMENSIONS				DEED ACRES	6.20			APPRAISED VALUE RECAP			
						CALC ACRES	0.0			IMPROVEMENTS 0			
										LAND 146,700			
										TOTAL APPRAISAL 146,700			
										ASSESSMENT 58,680			
										PROPERTY TYPE 08 40%			

TOTAL UNITS	SHAPE FACTORS	SIZE	ADJD UNITS	BASE RATE	ADJD BASE RATE	IMPR. TYPE	ACTUAL YEAR BUILT	EFFECTIVE
AREA DESCR	% OF RATE	ADJD SQUARE FOOT RATE	AREA RATE	SQUARE FEET	REPLACEMENT COST NEW			

TOTAL AREAS ->	AUX =	BASE =					
AGE	NORM PHTS	OTHER PHTS	DEPRECIATION FUNC	ECON	% COND	REPL COST NEW	DEPR REPL COST

EX. FEAT/SPEC. BLDG. DESCRIPTION	QUAL	SIZE	UNIT PRICE	UNITS	EFF YR BUILT	ANNUAL DEPR RATE	PERCENT CONDITION	DEPRECIATED VALUE
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								

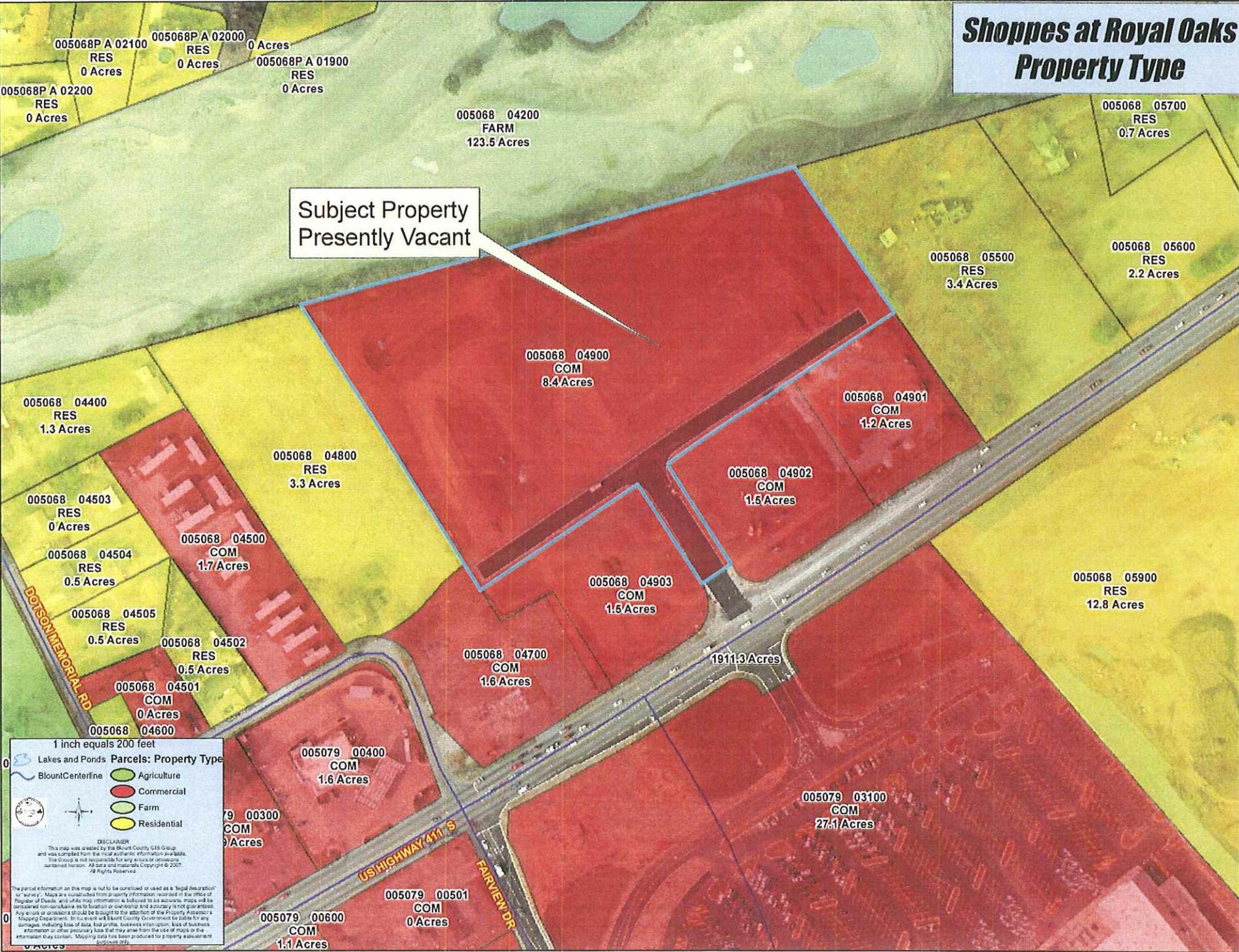
NO. OF STORIES CAAS LOCAL ASSESSOR SYSTEM

GENERAL PARCEL DATA											
LAND APPRAISAL	BY	S.S.D.	WARD	E.D.D.	PLAN	OTHER	NORTH	MOBILE HOME	AREA CODE		
06/15/05	05					33			A01		
PARC. STAT.	DIST	TOPO	TYPE	ROAD NO.	ROAD TYPE	CONST. CODE	SUBDV. TRACT	COORDINATES			
1	1	1	0		2			N-S			
CENSUS TRACT			BLOCK	FACE	AREA	COND	OPTIONAL	INTEREST CODE			
E-W											
GENERAL CARD DATA											
BLDG APPRAISAL	BY	SOURCE	NO. DWELL UNITS	UTILITIES	ZONING	OCC	COND				
			1	3	1	0					
PERMIT NO.	F.H.A. NUMBER		RENTAL SOURCE	RENTAL AMOUNT	RENTAL SCHEDULE						

EX. FEAT/SPEC. BLDG. APPR. DATE	APPR. BY	TOTAL CALCULATED EX. FEAT/SPEC. BLDG. VALUE														
LAND DESCRIPTION	DESC CODE	SIZE-DIMENSION	SOIL CLASS	UM	FLD	LOC	SIZE	DEPTH FACTOR	COND FACTOR	UNIT LAND PRICE	ADJD. UNIT LAND PRICE	LAND UNITS	MARKET LAND VALUE	USE COND. FACTOR	LAND USE UNIT PRICE	USE LAND VALUE
1. INDUST	15			29	100	100	100	100	110	21,503.23	23,653.55	6.20	146,652			
2.																
3.																
4.																
5.																
6.																
LAND USE CODES		1.	2.	3.	4.	LAND TOTAL		THIS CARD		6.20	146,652	THIS CARD				

MARKET DATA												NOTES					
DATE	PRICE	BOOK	PAGE	VI	INS	Q	DEED TRANSFER	BOOK	PAGE								
1. 08/30/05	140,000	2073	1746	V	WA	Q	08/31/05	2073	1746	THIS AC FROM 9-27.04 FOR 03*PRORATED 208 DAYS, PU(25530) FOR 02*+10% LOCATION*							
2.							06/17/02	669	29								
3.																	
4.																	

Shoppes at Royal Oaks Property Type



Subject Property
Presently Vacant

1 inch equals 200 feet

Parcels: Property Type

- Agriculture
- Commercial
- Farm
- Residential

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STATE OF TENNESSEE REAL ESTATE APPRAISAL CARD

HWY 411 S OFF		SUBDIV. 1	THE SHOPS AT ROYAL OAKS				TAX YEAR	06	068		068	049.00	000		
PROPERTY ADDRESS			BK	PG	BLOCK	LOT 2	2007	DIST	MAP	GROUP	CONTROL MAP	PARCEL	PI	S/I	
OWNER'S NAME AND MAILING ADDRESS		SUBDIV. 2					COUNTY OF								
			BK	PG	BLOCK	LOT	BLOUNT								
		ADDITIONAL DESCRIPTION	2321A				464 MARYVILLE								
		DIMENSIONS					TOTAL LAND UNITS	8.41		APPRaised VALUE RECAP					
							DEED ACRES	8.41							
							CALC ACRES	0.0							

TOTAL UNITS		SHAPE FACTORS	SIZE	ADJD UNITS	BASE RATE	ADJD BASE RATE	IMPR. TYPE	ACTUAL YEAR BUILT	EFFECTIVE YEAR BUILT
AREA DESCR	% OF RATE	ADJD SQUARE FOOT RATE	AREA RATE	SQUARE FEET	REPLACEMENT COST NEW				

TOTAL AREAS ->		AUX =		BASE =											
AGE		NORM PHYS		OTHER PHYS		FUNG		ECON		% COND		REPL COST NEW		DEPR REPL COST	

EX. FEAT/SPEC. BLDG. DESCRIPTION		QUAL	SIZE	UNIT PRICE	UNITS	EFF YR BUILT	ANNUAL DEPR RATE	PERCENT CONDITION	DEPRECIATED VALUE
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									

EX. FEAT/SPEC. BLDG. APPR. DATE		APPR. BY		TOTAL CALCULATED EX. FEAT/SPEC. BLDG. VALUE												
LAND DESCRIPTION	DESC CODE	SIZE-DIMENSION	SOIL CLASS	UM	FLD	LOC	SIZE	DEPTH FACTOR	COND FACTOR	UNIT LAND PRICE	ADJD. UNIT LAND PRICE	LAND UNITS	MARKET LAND VALUE	USE COND. FACTOR	LAND USE UNIT PRICE	USE LAND VALUE
1. SM TRAC	03			49	100	100	100	100	100	115,538.88	115,538.88	8.41	971,682			
2.																
3.																
4.																
5.																
6.																

LAND USE CODES		1. 11	2.	3.	4.	LAND TOTAL		THIS CARD		8.41	971,682	THIS CARD	
MARKET DATA		DATE	PRICE	BOOK	PAGE	VII	INS	D	DEED TRANSFER	BOOK	PAGE	NOTES	
1. 03	30 05	1,735,000	2051	1336	1	WP	D	06 02 08	2110	2435	.10AC FROM 68-52 484/585 4-10-87 FOR 88*523/636,535/748 1-6-		
2. 08	30 94	150,000	565	439	1	WP	D	03 31 05	2051	1336	92*.04AC TO ST 571/358*AC BY DEED FOR 06 523/340,565/439 538		
3.								08 30 94	565	439	/529,538/531*PU(107864)TO CITY,PRORATED ASSMT-ANNEXED 4-21-		
4.								12 30 82	00448	00780	08 FOR 06*68-50 & 68-49.00-001 ADDED HERE, 1.21AC TO 49.01...		

GENERAL PARCEL DATA		LAND APPRAISAL BY	S.S.D.	WARD	E.D.D.	PLAN	OTHER	M-219	MOBILE HOME	AREA CODE
		09/19/08	05					33		E01
GENERAL CARD DATA		BLDG APPRAISAL BY	SOURCE	NO. DWELL UNITS	UTILITIES	ZONING	OCC	COND		
				1	3 1 1					
PERMIT NO.		F.H.A. NUMBER		RENTAL SOURCE	RENTAL AMOUNT	RENTAL SCHEDULE				

25

A005 CT-0338

STATE OF TENNESSEE REAL ESTATE APPRAISAL CARD

HWY 411 S OFF		SUBDIV. 1	THE SHOPS AT ROYAL OAKS			TAX YEAR	06	068	068	049.00	000		
PROPERTY ADDRESS		SUBDIV. 2	BK	PG	BLOCK	LOT 2	DIST	MAP	GROUP	CONTROL MAP	PARCEL	PI	SI
OWNER'S NAME AND MAILING ADDRESS		2321A			COUNTY OF BLOUNT			DATE UPDATED 11/16/06					
		ADDITIONAL DESCRIPTION			464 MARYVILLE			DATE PRINTED 10/03/07					
		DIMENSIONS			TOTAL LAND UNITS			APPRaised VALUE RECAP					
					DEED ACRES			IMPROVEMENTS 0					
					CALC ACRES			LAND 971,700					
								TOTAL APPRAISAL 971,700					
								ASSESSMENT 388,680					
								PROPERTY TYPE 08 40%					

TOTAL UNITS	SHAPE FACTORS	SIZE ADJD UNITS	ADJD BASE RATE	ADJD BASE RATE	IMPR. TYPE	ACTUAL YEAR BUILT	EFFECTIVE YEAR BUILT
AREA DESCR	% OF RATE	ADJD SQUARE FOOT RATE	AREA RATE	SQUARE FEET	REPLACEMENT COST NEW		

TOTAL AREAS ->	AUX =	BASE =						
AGE	NORM PHS	OTHER PHS	FUNC	ECON	% COND	REPL COST NEW	DEPR REPL COST	
EX FEAT/SPEC. BLDG. DESCRIPTION	QUAL	SIZE	UNIT PRICE	UNITS	EFF YR BUILT	ANNUAL DEPR RATE	PERCENT CONDITION	DEPRECIATED VALUE

1. XNOTE	S		1.00	1		0.00		1
2.								
3.								
4.								
5.								
6.								
7.								
8.								

EX FEAT/SPEC. BLDG. APPR. DATE	APP. BY	TOTAL CALCULATED EX. FEAT/SPEC. BLDG. VALUE														
LAND DESCRIPTION	DESC CODE	SIZE-DIMENSION	SOIL CLASS	UM	FLD	LOC	SIZE	DEPTH FACTOR	COND FACTOR	UNIT LAND PRICE	ADJD. UNIT LAND PRICE	LAND UNITS	MARKET LAND VALUE	USE COND. FACTOR	LAND USE UNIT PRICE	USE LAND VALUE
1.																
2.																
3.																
4.																
5.																
6.																

LAND USE CODES		1	2	3	4	LAND TOTAL		THIS CARD		THIS CARD	
MARKET DATA		DATE	PRICE	BOOK	PAGE	V/I	INS	Q	DEED TRANSFER	BOOK	PAGE
1.											
2.											
3.											
4.											

CAAS LOCAL ASSESSOR SYSTEM										GENERAL PARCEL DATA																																												
NO. OF STORIES					GENERAL PARCEL DATA					LAND APPRAISAL BY S.S.D. WARD E.D.D. PLAN OTHER					MORTG. CODE NO. OF MOBILE HOME NO. OF AREA CODE																																							
EX FEAT/SPEC. BLDG. DESCRIPTION					QUAL					SIZE					UNIT PRICE					UNITS					EFF YR BUILT					ANNUAL DEPR RATE					PERCENT CONDITION					DEPRECIATED VALUE														
1. XNOTE					S										1.00					1										0.00										1														
2.																																																						
3.																																																						
4.																																																						
5.																																																						
6.																																																						
7.																																																						
8.																																																						

GENERAL CARD DATA																													
BLDG APPRAISAL BY SOURCE					NO. DWELL UNITS					UTILITIES					ZONING					OCC					COND				
					1 3 1 1																								
PERMIT NO.					F.H.A. NUMBER					RENTAL SOURCE					RENTAL AMOUNT					RENTAL SCHEDULE									

LAND USE CODES										LAND TOTAL										THIS CARD										THIS CARD									
----------------	--	--	--	--	--	--	--	--	--	------------	--	--	--	--	--	--	--	--	--	-----------	--	--	--	--	--	--	--	--	--	-----------	--	--	--	--	--	--	--	--	--

MARKET DATA										DEED TRANSFER										BOOK										PAGE										NOTES									
1.																																								1.45AC TO 49.02, 1.43AC TO 49.03 FOR 07*FUTURE R.O.W. PLANNED HERE*DELETE ALL IMP'S INCLUDING SI 001 CARD-CLEARING LAND*									
2.																																																	
3.																																																	
4.																																																	

Appeal

Information

Appealed Cases

Title Page

- 1) Al-Jafari Othman vs. Shelby County, 2006
(Appellant Brief, Appeal Pending)
- 2) Rivermark Development Partnership vs. Shelby County, 1986
- 3) Airport Land Company, LP vs. Davidson County, 2000
- 4) Crown Enterprises, Inc. vs. State Board of Equalization, 1976
- 5) General American Transportation Corporation vs. Tennessee Board of Equalization, 1976
- 6) Stewart A. Taylor vs. Washington County, 2004-2006
(Administrative Judge Ruling, Appellant has appealed this decision and the case is currently pending at the Assessment Appeals Commission)

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Al-Jafari Othman)
Parcel ID: B0158 00879) Shelby County
Commercial Property)
Tax Year 2006)

The property is currently valued for tax year 2006 as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>TOTAL ASSESSMENT</u>
\$1,800,000	\$ 0	\$1,800,000	\$720,000

FACTS

Subject property is a 6.27 acre tract of vacant land on Germantown Road in Bartlett, Tennessee. The owner purchased this property on April 27, 2005 for \$1,000,000 from Bankcorpsouth, which had acquired it one month earlier in a foreclosure for \$900,000. The property is undeveloped, partially wooded vacant land.

VALUE

Five parcels in the neighborhood, including the Subject, have sold between 2000 and the present. The subject parcel is valued at 180% of its sales price, while the other sold parcels are valued from 9% to 17% of these sales prices. (Exhibit A, p. 3.) The vacant land parcels in the neighborhood of the Subject are valued by the Assessor between \$.35 and \$1.01 per square foot and are predominantly classed residential. (Exhibit A, pp 2-3.) These facts are evidence of a systematic undervaluation of the neighborhood.

The Assessment Appeals Commission, in *Peyton & Melissa Goldsmith* (Shelby County, Tax Year 2001, stated:

Until the assessor has appropriately adjusted all assessments in this neighborhood which appear to suffer from systematic undervaluation, Mr. Goldsmith's assessment should remain comparable to his neighbors'.

The evidence indicates that the comparable vacant land in the neighborhood is not valued at market value. The taxpayer requests that, pursuant to the holding in *Goldsmith*, the value of this parcel should be set at \$.44 per square foot, a value consistent with the similar sized neighborhood parcel 114.

CLASSIFICATION

The taxpayer contends that the property should be classified as residential. Judicial and administrative decisions have adopted an objective, easily applied classification criterion of actual physical use.

T. C. A. § 67-1-801(c) provides:

(1) All real property that is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

ENUMERATED FACTORS

- (A) Immediate prior use, if any;
- (B) Location;
- (C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;
- (D) Other legal restrictions on use;
- (E) Availability of water, electricity, gas, sewers, street lighting, and public services;
- (F) Size;
- (G) Access to public

SUBJECT PROPERTY

- (A) Vacant, unused, partially wooded
- (B) See attached map, Exhibit A
- (C) C-H – commercial highway
- (D) None
- (E) At street, but not extended onto property
- (F) 6.27 acres
- thoroughfares; and

(H) Any other factors relevant to a determination of the immediate use of the property

(G) No curb cuts

(H) abuts residential, exempt and commercial/industrial land uses

(2) If, after consideration of all such factors, any such real property does not fall within any of the definitions and classifications in this section, such property shall be classified and assessed as farm or residential property.

Please see the attached aerial photograph, Exhibit A, page 1. The subject property is a vacant, unused, unimproved, partially wooded tract of land, 6.27 acres in size. It has never been used for any commercial activity. The east side of the property has frontage, but no curb cuts, on Germantown Road. Utilities, sewer, and lighting are available, but not extended onto the property.

The property is surrounded by properties of varying uses, primarily residential. There is a mini-storage business forming an "L" on the north and west sides of the property. North of the mini-storage is the Bartlett Water Treatment Plant. The other parcels to the north and south of the Subject are classed residential and are either vacant land or are improved with old, small, single-family residences. The land on the other side of Germantown Road is all vacant with the exception of one parcel improved with a small strip retail center.

In *Airport Land Company, LP* (Davidson County, Tax Year 2000), the Assessment Appeals Commission ruled that the infrastructure necessary to support a commercial or industrial use was not in place; therefore, industrial or commercial use was "not a likely immediate and economically suitable use." The property in this case was subclassified as farm property.

In *Rivermark Development Partnership* (Shelby County, Tax Year 1986, February 9, 1987), the administrative judge observed:

The Assessment Appeals Commission has addressed this issue in an appeal involving vacant industrial lots on Winbrook Drive in Shelby County (January 23, 1979). In that matter they stated:

This parcel is a vacant lot zoned for commercial use and located in an area of extensive commercial development. The most probable future use of the parcel would seem to be as commercial property. However, judicial and administrative decisions have largely restricted T. C. A. §67-611 to the objective, more easily applied classification criteria of actual physical use. This lessens the burden on assessing officials to make subjective determinations in such matters and prevents the property owner from bearing a commercial assessment for an indefinite time before actual commercial benefits are realized. Of course, if commercial use was imminent, as when preparations had been made to begin development during a tax year and such was evident on January 1st of that year, it would seem that the last paragraph of the statute would apply to justify a commercial classification. But this is not deemed applicable in the instant case, and, therefore, the classification is changed to residential.

In short, the "immediate most suitable economic use" for 2006 is its continued use as vacant and partial woodlands. As of the assessment date and as of this current date, the property remains vacant and partial woodlands. In *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County, Tax Year 1998), The Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3. The continued vacant, unused, unimproved partial woodland use of this property is indicative of the fact that the "immediate most suitable economic use" is not commercial.

Accordingly, the subject parcel, which is vacant, unimproved woodland, should be classified as residential.

The taxpayer requests that the parcel be valued at \$.44 per square foot and classified residential as indicated below:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>TOTAL ASSESSMENT</u>
\$120,200	\$ 0	\$120,200	\$30,050

EVANS & PETREE PC
 1000 Ridgeway Loop Road, Suite 200
 Memphis, Tennessee 38120
 901.525.6781 fax 901.526.0336
 Attorneys for Taxpayer

Date: July 12, 2007

67-611

was

67-801

Predecessor

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Riverview Development Partnership }
Map 2-86, Parcel 6 } Shelby County
Tax Year 1986 }

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows.

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,105,300	0-0-	\$1,105,300	\$442,120

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the Administrative Judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The Administrative Judge conducted a hearing in this matter on November 3, 1986.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a vacant parcel of land consisting of 16.916 acres.

The parcel was classified by the Shelby County Assessor as commercial and industrial and assessed at 40% of value. The taxpayer appeals this classification of commercial and industrial on the subject property to the Tennessee State Board of Equalization, contending that the "immediate most suitable separate use" of the property is not commercial and industrial and therefore the parcel should be assessed at 25% of value.

The taxpayer contends that the property should be classified at 25% of value pursuant to Tenn. Code Ann. § 67-5-801, previous decisions of the Assessment Appeals Commission, the State Board of Equalization, and the Tennessee Courts.

The county contends that the proper classification for this property is commercial and industrial and therefore this parcel should be assessed at 40% of value. They state that the immediate prior use was commercial and that the property is still zoned commercial.

The subject property has an unusual history in that it was once part of a larger parcel which was a Holiday Inn hotel. The subject property was split off when the hotel was converted to the Riverview Condominiums.

The issue to be decided in this appeal concerns the proper classification of this vacant and unused parcel of property. The taxpayer contends that irrespective of the prior use, there is no "immediate" commercial activity and

the present climate is towards a residential use for condominiums.

This request is based upon a reading of T.C.A. 67-5-801(4)(c)(1) which states as follows:

(c)(1) All real property which is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

- (A) Immediate prior use, if any;
 - (B) Location;
 - (C) Zoning classification; provided, however, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;
 - (D) Other local restrictions on use;
 - (E) Availability of water, electricity, gas, sewers, street lighting, and public services;
 - (F) Size;
 - (G) Access to public thoroughfares; and
 - (H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.
- (2) If, after consideration of all such factors, any such real property does not fall within any of the foregoing definitions and classifications, such property shall be classified and assessed as farm or residential property.

The taxpayer, therefore, asserts that vacant and unused land, with no immediate commercial use, is not income producing and thus should not bear a commercial classification.

The Assessment Appeals Commission has addressed this issue in an appeal involving vacant industrial lots on Winbrook Drive in Shelby County (January 23, 1979)

In that matter they stated:

This parcel is a vacant lot zoned for commercial use and located in an area of extensive commercial development. The most probable future use of the parcel would seem to be as commercial property. However, judicial and administrative decisions have largely restricted T.C.A. § 67-611 to the objective, more easily applied classification criteria of actual physical use. This lessens the burden on assessing officials to make subjective determinations in such matters and prevents the property owner from bearing a commercial assessment for an indefinite time before actual commercial benefits are realized. Of course, if commercial use was imminent, as when preparations had been made to begin development during a tax year and such was evident on January 1st of that year, it would seem that the last paragraph of the statute would apply to justify a commercial classification. But this is not deemed applicable in the instant case, and, therefore, the classification is changed to residential.

The Tennessee Supreme Court held in Shaw v. City of Memphis, 527 S.W.2d 99, 66 (Tenn. 1975) that the "purpose and objective of [Article II, Section 28 providing for 55% - 40% - 25% - 25% assessment ratios for public utilities, industrial and commercial, residential, and farm property, respectively] is to tax income-producing property at a higher rate than owner-occupied residences and farms". (Emphasis added.) The court in General American Transportation Corporation v. Tennessee State Board of Equalization, 536 S.W.2d 212 (1976), stated "the 1973 amendment to the Tennessee Constitution specifically

authorized the classification of property according to use. This was the purpose, spirit and intent of the amendment" and "The Tennessee statutes do not attempt to assess or tax property according to ownership, but according to use". In Crown Enterprises v. State Board of Equalization, 543 S.W.2d 583 (1976) at 585 the court made this observation, "This court . . . held that it was the use to which property was being put, not ownership of the property, that determined property classification". Similar reasoning can be found in the Appeal of Sneed Brothers and Walker Development Company decided by the State Board of Equalization in an opinion dated February 14, 1975.

In the final analysis it must be noted that the statute does not call for the classification issue to be decided by the "most suitable economic use" but rather by the "immediate most suitable economic use". "Immediate" implies an imminent use, one which is at hand. Unless commercial use is impending, the property does not fall within the industrial and commercial property definition and therefore must be governed by the last sentence of the statute which dictates a 25% classification.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, it is the finding of the Administrative Judge that the subject property should be classified as residential and assessed at 25% of value. This conclusion is based upon a finding that it is unclear what the future use of this property will be. There is no "immediate" impending commercial activity and indications of a trend toward residential use.

ORDER

It is therefore ORDERED, ADJUDGED AND DECREED, that the following values be adopted for tax year 1986.

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,105,300	\$-0-	\$1,105,300	\$276,325

Pursuant to the Uniform Administrative Procedures Act, interested parties may appeal this decision to the Assessment Appeals Commission within 15 days. Additional procedures, such as a petition for reconsideration or request for a stay of effectiveness, will be considered as an appeal to the Assessment Appeals Commission as this order does not become final until an Official

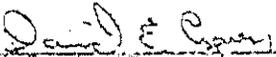
FROM :

PHONE NO. :

P09

Certificate is issued by the Assessment Appeals Commission.

ENTERED this 9th day of February, 1987.



DAVID E. CYPRESS
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

S1W122

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of: AIRPORT LAND COMPANY, LP)
Map 121-00-0, Parcel 137; Map 135-00-0,)
Parcels 120, 132, 141) Davidson
Commercial Property) County
Tax Year 2000)

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who found that only part of the subject properties qualified for a "greenbelt" use value classification. The appeal was heard in Nashville on October 17, 2001, before Commission members Isenberg (presiding), Brooks, and Millsaps, sitting with an administrative judge¹. Mr. J. O. Catignani, an agent registered with the State Board of Equalization, represented the taxpayer and Mr. Jimmy Clary of the Metro Davidson County Assessor's office, represented the assessor. Before the Commission, the taxpayer also raised the issue of the proper constitutional assessment subclassification of the properties.

Findings of fact and conclusions of law

The Agricultural, Forest, and Open Space Land Act of 1976, or greenbelt law, allows qualifying land to be assessed for property taxes on the basis of its current use value rather than its market value in some more intensive use. The subject properties are five contiguous tracts totaling 172 acres which Airport Land Company purchased in 1972. In the mid-1980's the company successfully sought a zoning change for the properties (to industrial) in anticipation of an extension of a major thoroughfare (Harding Place Road), but the extension has not to date occurred.

A neighbor, Charles Meriwether, farms about forty acres of the property under an oral lease. The portions farmed are Parcels 141 and 142, and the remaining parcels have been allowed to return to a natural condition. At some time in the past these remaining parcels may have been farmed as well, but they are not farmed at present. The assessor denied greenbelt for all the parcels because farming occurred only on a portion of the property and in the assessor's opinion the property was being held primarily for development. The administrative judge found that the parcels being actively farmed (Parcels 141 and 142) should be approved

¹ An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

for the greenbelt agricultural classification but that the remaining parcels should be denied because they are not being farmed.

Mr. Catignani urges the Commission to determine that these unfarmed parcels should be included in the greenbelt agricultural classification because they are incidental "woodlands and wastelands" as referred to in the statutory definition of agricultural land. Insofar as relevant here, Tenn. Code Ann. §67-5-1004(1) defines agricultural land for greenbelt purposes as follows:

(A) "Agricultural land" means land which meets the minimum size requirements specified hereafter and which . . . constitutes a farm unit engaged in the production or growing of agricultural products;

(B) To be eligible as agricultural land, property must meet minimum size requirements as follows: it must consist either of a single tract of at least fifteen (15) acres, including woodlands and wastelands, or two (2) noncontiguous tracts, including woodlands and wastelands, one (1) of which is at least fifteen (15) acres and the other being at least ten (10) acres and together constituting a farm unit

Mr. Clary contends that Parcels 120 and 137, comprising 128 acres of the total of 172 acres represented by all the parcels, which are not farmed and produce no farm income, should not be considered a farm unit as the term is used in the statute and therefore the denial of greenbelt should be upheld. Because the statute provides no limitation on the amount of woodlands and wastelands that may comprise a part of a farm unit, and because a significant part of this property is farmed, we find that the properties in the aggregate qualify for the agricultural land classification notwithstanding that the majority of the acreage is not presently being farmed.

We next consider the proper assessment subclassification of the properties, i.e., whether they are to be assessed at the 40% level reserved in the Tennessee Constitution for industrial and commercial property or the 25% level established for agricultural property. The statute governing assessment classification states that property in actual use is to be classified according to its actual use and property which is vacant, unused, or held for use is to be classified according to its "immediate most suitable economic use" determined according to the following criteria:

- (A) Immediate prior use, if any;
- (B) Location;
- (C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;
- (D) Other legal restrictions on use;
- (E) Availability of water, electricity, gas, sewers, street lighting, and public services;
- (F) Size;
- (G) Access to public thoroughfares; and

(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

If application of these criteria does not point to any of the constitutional subclassifications (public utility, commercial and industrial, farm, or residential), the unused property is to be classified as farm or residential (Tenn. Code Ann. §67-5-801). The assessor classified the unused properties according to their zoning, as commercial and industrial.

Mr. Catignani contends that the unused parcels should not be considered to have an immediate use as industrial or commercial property because the necessary infrastructure to support these uses is not yet in place. We agree that the classification of unused land should not be determined solely by reference to its zoning (except for subdivision lots, not at issue here), and the taxpayer has adequately demonstrated, without rebuttal from the assessor, that industrial or commercial use is not a likely immediate and economically suitable use. Accordingly, even the unused parcels in this instance should be subclassified as farm property.

Mr. Isenberg concurs with the foregoing as to the assessment subclassification issue but dissents on the issue of greenbelt classification for the unused parcels.

ORDER

By reason of the foregoing, it is ORDERED, that the initial decision and order of the administrative judge is reversed in part, as to the greenbelt classification of Parcels 120, 132, and 137. These parcels are approved for the greenbelt agricultural land classification. The initial decision and order is in other respects affirmed. It is further ORDERED, that the constitutional assessment subclassification of all the subject parcels is as farm property. This order is subject to:

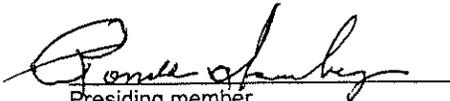
1. Reconsideration by the Commission, in the Commission's discretion.

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

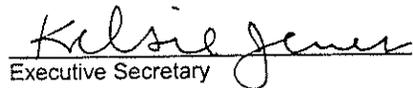
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final. Requests for stay of effectiveness will not be accepted.

DATED: Dec. 10, 2001



Presiding member

ATTEST:



Executive Secretary

cc: Mr. J. O. Catignani
Ms. Jo Ann North, Assessor

(Cite as: 543 S.W.2d 583)

▷
 Crown Enterprises, Inc. v. State Bd. of Equalization,
 Tenn. 1976.

Supreme Court of Tennessee.
 The CROWN ENTERPRISES, INC., Appellant,
 v.
 The STATE BOARD OF EQUALIZATION et al.,
 Appellees.
 Nov. 15, 1976.

On petition for certiorari, the Chancery Court, Davidson County, C. Allen High, Chancellor, concluded that the State Board of Equalization did not act illegally or in excess of its jurisdiction in classifying taxpayer's property as public utility property for ad valorem tax assessment purposes and dismissed petition, and taxpayer appealed. The Supreme Court, Cooper, C.J., held that property, which was in fact put to use as truck terminal and repair facility by trucking company that leased property and was a public utility, was public utility property and had to be classified as such for purpose of ad valorem taxes, and that since it was interest in real property owned by taxpayer that was assessed and not trucking company's leasehold interest, property did not have to be assessed by Public Service Commission rather than by metropolitan assessor of property.

Affirmed.

West Headnotes

[1] Taxation 371 ↪2521

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)5 Valuation of Property

371k2520 Valuation of Particular Real
 Property

Cases

(Formerly 371k375(1))

Property that was owned by taxpayer and that was in fact put to use as truck terminal and repair facility by trucking company which leased property and which was a public utility was "public utility property" within purview of Property Assessment and Classification Act, definitional provision and had to

be classified as such for purpose of ad valorem taxes. Const. art. 2, § 28; T.C.A. §§ 67-601(7), 67-611.

[2] Taxation 371 ↪2559

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)5 Valuation of Property

371k2559 k. Express and Other
 Transportation Companies. Most Cited Cases
 (Formerly 371k388)

Since it was the interest in property owned by taxpayer and not leasehold interest of trucking company that was assessed, property did not fall within either of basic groups of properties consisting of all properties within state owned by certain motor bus or truck companies and all personal property used or leased by such companies that have to be assessed by Public Service Commission, and thus such property did not have to be assessed by Public Service Commission but could be assessed by metropolitan assessor of property. T.C.A. § 67-901.

[3] Taxation 371 ↪2667

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)8 Review, Correction, or Setting
 Aside of Assessment in General

371k2667 k. Mode and Course of
 Procedure in General. Most Cited Cases
 (Formerly 371k493.8)

Where taxpayer was represented by counsel at hearing before State Board of Equalization, offered testimony and was given opportunity to submit posthearing brief, taxpayer at no time questioned value placed on property by assessing authority but only questioned classification of property for ad valorem tax purposes, and taxpayer had full opportunity to present its position on controlling issue of law, any error in procedure before "hearing examiner" or State Board of Equalization in connection with classification of taxpayer's real property as public utility property for ad valorem tax assessment purposes was harmless. T.C.A. § 67-639.

*584 James W. Bradford, Jr., Edwin O. Norris, Hunter, Smith, Davis, Norris, Treadway & Hadden,

Kingsport, for appellant.

R. A. Ashley, Jr., Atty. Gen., Everett H. Falk, Deputy Atty. Gen., Nashville, for appellees. COOPER, Chief Justice.

OPINION

In this action Crown Enterprises, Inc., challenges the classification of real property as 'public utility property' for ad valorem tax assessment purposes.

The action originated as a petition for certiorari from the State Board of Equalization. Appellant contended that the taxing authority usurped the jurisdiction of the Tennessee Public Service Commission by classifying and assessing the taxpayer's property according to the use made of the property by the lessees, that the property should have been classed as 'industrial and commercial property,' and that the procedure followed by the Board in considering the appeal of the property classification violated due process. On considering the issues in the light of the record filed with the court by the State Board of Equalization and the evidence submitted in the chancery court, the chancellor concluded the Board had not acted illegally or in excess of its jurisdiction in classifying appellant's property for tax purposes and dismissed the petition for certiorari. Crown Enterprises, Inc., appealed, taking issue with the chancellor's holding on each of the issues raised in the petition for certiorari.

Appellant is a Tennessee corporation engaged in the business of acquiring, leasing, renting, and owning real property. In the prosecution of its business, it has leased real property to regulated public utilities in several of the larger cities of Tennessee. One such lease involves 6.3 acres of land located at 1500 Second Avenue, South, Nashville, Tennessee. The property is leased to the Mason and Dixon Lines, Inc., for use in the conduct of its business as a regulated public utility. Mason Dixon operates a truck terminal and repair shop on the property.

In 1973, the Assessor of Property for Metropolitan Nashville and Davidson County classified the property as public utility property and assessed the property to appellant at fifty-five per cent of its fair market value. Appellant perfected an appeal to the State Board of Equalization, challenging the classification of the property. The appeal was heard by a 'hearing examiner' for the State Board, with the result that the 'hearing examiner' orally *585

informed appellant the property would be classified as commercial and industrial property, which carries a lower assessment than public utility property.

On reviewing the report of the 'hearing examiner,' the Executive Secretary of the State Board of Equalization notified appellant that he disagreed with the conclusion of the 'hearing examiner,' and issued a 'Corrected Official Certificate' classifying the property as public utility property.

Appellant took issue with the action of the Executive Secretary and was granted a hearing before the State Board of Equalization. The State Board classified the property as 'public utility property,' subject to being assessed at fifty-five per cent of its fair market value.

Article II, Section 28 of the Tennessee Constitution, as amended in 1973, requires classification of property for ad valorem tax purposes, and prescribes four subclassifications: (1) public utility property, (2) industrial and commercial property, (3) residential property, and (4) farm property. In establishing the classifications and subclassifications, Article II, Section 28 specifically provides that the Legislature shall direct the manner in which the value and definition of the property in each class or subclass are to be ascertained.

The Legislature has enacted a comprehensive Property Assessment and Classification Act, now codified in Title 67, Tennessee Code Annotated, and has provided in Section 67-611 that:

'For the purpose of taxation all real property except vacant or unused property or property held for use, shall be classified According to use, and assessed as hereinafter provided . . .' (Emphasis supplied.)

Appellant insists that the phrase 'according to use' requires property to be assessed to the owner in accordance with the use the owner makes of the property. On the other hand, appellee insists it is the actual use to which the property is put that determines its classification. This court considered similar contentions with respect to personal property—specifically, railroad cars designed to transport meats and other products requiring special equipment and which were leased to private businesses—and held that it was the use to which the property was being put, not ownership of the property, that determined property classification.

'The Tennessee statutes do not attempt to assess or tax property according to ownership, but according to

(Cite as: 543 S.W.2d 583)

use.' Gen. Am. Transp. Corp. v. Tenn. Bd. of Equal., Tenn., 536 S.W.2d 212 (1976).

If it were otherwise, and the classification depended upon ownership of the property, a public utility could defeat the constitutionally prescribed classification of property merely by leasing property needed to operate the public utility from a non-public utility owner of property.

[1] Public utility property is defined in T.C.A. 67-601(7)

' . . . to include all property of every kind, whether owned or leased, and used, or held for use, directly or indirectly in the operation of a public utility, which shall include but not necessarily be limited to the following business entities, whether corporate or otherwise: . . . (11) motor bus and/or truck companies holding a Certificate of Convenience and Necessity or contract haulers permit from the Tennessee public service commission or the interstate commerce commission and domiciled in this state and/or owning or leasing real or personal property located in this state; . . .'

By its terms, the public utility property definition includes all property, whether owned or leased, and used or held for use directly or indirectly in the operation of a public utility. The 6.3 acre tract of land owned by appellant was in fact put to use as a truck terminal and repair facility by a trucking company which is a public utility. The property, being used directly in the operation of a public utility, is public utility property within the definition of T.C.A. s 67-601(7), and must be classified as such for the purpose of ad valorem taxes.

[2] Appellant argues that if the subject property is classified as public utility property*586 for tax purposes, it must be assessed by the Public Service Commission and not by the Metropolitan Assessor of Property, citing T.C.A. s 67-901 which provides in part as follows:

' The Tennessee public service commission, hereinafter called the commission, is authorized and directed to assess for taxation, for state, county, and municipal purposes, all of the properties of every description, tangible and intangible, within the state, owned by and all personal property used and/or leased by the following named persons hereinafter referred to as companies, namely: . . . (11) motor bus and/or truck companies holding a certificate of convenience and necessity or contract hauler's permit

from the Tennessee public service commission or the interstate commerce commission and domiciled in this state and/ owning or leasing real or personal property located in this state; . . .'

As pointed out by appellees, ' this statute directs the Public Service Commission to assess two basic groups of properties-(1) all properties within the State Owned by the described companies, and (2) all Personal property used and/or leased by the described companies.'

Appellant argues the leasehold interest of Mason Dixon is personalty and thus is within the basic groups of property to be assessed by the Public Service Commission. The fallacy of this argument is that the leasehold interest is not the property interest that was assessed. It was the fee interest in Real property Owned by appellant, who is not a company described in T.C.A. s 67-901; consequently, the property does not fall within either of the basic groups of properties that are to be assessed by the Public Service Commission.

Aside from questioning the merits of the classification of appellant's property for ad valorem tax purposes, plaintiff insists there were two flagrant violations of procedural due process in this case:

One, that appellant was not given notice nor an opportunity for a hearing before the Executive Secretary issued the ' Corrected Official Certificate' classifying appellant's property as ' public utility property;'

Two, that appellant was coerced into a hearing on the merits of its claim before the State Board of Equalization.

[3] We see no basic violation of due process in the procedure followed in classifying appellant's property for ad valorem tax purposes or in the review of the classification. Cf. T.C.A. s 67-639. Certainly, there was no coercion so as to invalidate the hearing before the State Board of Equalization wherein appellant was represented by counsel, offered testimony, and was given the opportunity to submit a post-hearing brief. Further, it is interesting to note that appellant at no time questioned the value placed on the property by the assessing authority, but only questioned the classification of the property for ad valorem tax purposes. The facts on which the classification was

(Cite as: 543 S.W.2d 583)

based were undisputed, leaving in issue only the legal conclusion to be drawn from the facts. Appellant had a full opportunity, both before the State Board of Equalization, the chancery court, and this court, to present its position on the controlling issue of law. This being so, any error in the procedure before the 'hearing examiner' or the State Board of Equalization would be harmless error.

Decree affirmed. Costs incident to the appeal are adjudged against appellant, The Crown Enterprises, Inc., and its surety.

FONES, HENRY, BROCK and HARBISON, JJ.,
concur.

Tenn. 1976.

Crown Enterprises, Inc. v. State Bd. of Equalization

543 S.W.2d 583

END OF DOCUMENT

C

General American Transp. Corp. v. Tennessee Bd. of Equalization, Tenn. 1976.

Supreme Court of Tennessee.
GENERAL AMERICAN TRANSPORTATION CORPORATION, Appellant,
 v.
TENNESSEE STATE BOARD OF EQUALIZATION et al., Appellees.
 April 5, 1976.

Freight car company challenged classification of its property as 'public utility property' for ad valorem tax assessment purposes. The Chancery Court, Davidson County, C. Allen High, Chancellor, sustained classification, and company appealed. The Supreme Court, Harbison, J., held that where property subject to tax assessment was classified according to its use in transportation of property over railroad line and where property was placed in same general classification as that of all other companies engaged in business of transporting persons and property by rail, tax on property as 'public utility property' was not unreasonable, arbitrary, or illegal.

Affirmed.

West Headnotes

[1] Taxation 371 ⚡2244

371 Taxation

371III Property Taxes

371III(D) Corporations and Corporate Stock and Property

371k2244 k. Express and Other Transportation Companies. Most Cited Cases
 (Formerly 371k142)

There is nothing either arbitrary, illegal or unreasonable in classifying rolling stock of freight car company in same category as equipment owned by railroads themselves for purposes of imposition of ad valorem property tax. T.C.A. § 67-601.

[2] Corporations 101 ⚡391

101 Corporations

101XI Corporate Powers and Liabilities

101XI(A) Extent and Exercise of Powers in

General

101k391 k. Legislative Regulation. Most Cited Cases

State may not by legislative fiat convert a private corporation into a public utility for all purposes.

[3] Taxation 371 ⚡2103

371 Taxation

371III Property Taxes

371III(B) Laws and Regulation

371III(B)3 Constitutional Requirements and Restrictions

371k2103 k. Corporations and Corporate Stock and Property. Most Cited Cases

(Formerly 371k37.4)

Where freight car company's property subject to ad valorem property tax assessment as "public utility property" was classified according to its use in transportation of property over railroad line and where property was placed in same general classification as that of all other companies engaged in business of transporting persons and property by rail, tax was not unreasonable, arbitrary or illegal. T.C.A. § 67-601.

*212 Tyree B. Harris, Nashville, for appellant.

Everett H. Falk, Asst. Atty. Gen., Nashville, for appellees; R. A. Ashley, Jr., Atty. Gen., Nashville, of counsel.

OPINION

HARBISON, Justice.

In this action appellant, a freight car company, challenges the classification for ad valorem tax assessment purposes of its property as 'public utility property'. The chancellor sustained the classification, and this appeal was taken.

The action originated as a petition for certiorari from the State Board of Equalization and also as an original action for a declaratory judgment, the tax in question apparently having been paid under protest pursuant to the provisions of T.C.A. s 67-933. In the original petition for certiorari, other questions regarding the assessment were raised, but these have been abandoned. A written stipulation of the facts pertinent to the classification issue was filed before the chancellor.

(Cite as: 536 S.W.2d 212)

The stipulation shows that the appellant is a freight car company, owning and operating a large fleet of railroad cars of various types, including tank cars, coal cars and refrigerated units. These cars are operated for the transportation of property on railway systems running into this and other states. If Tennessee had a separate classification for tax purposes for railroad car companies, as those companies are defined in the taxing statutes of other states, there is no question but that appellant would fit such definition. See Burns Indiana Stats. Ann., s 6-1.1-8-2 (1975 Supp.); Minnesota Stats. Ann., s 295.01 (1972).

Tennessee does not separately classify and tax private car companies or sleeping car companies, but classifies, for tax purposes, the properties of these companies, together with properties of railroad companies and some twelve other types of business enterprises as 'public utility property'.

*213 The specific statutory definition contained in T.C.A. s 67-601, is as follows:

'(7) 'Public utility property' is hereby defined to include all property of every kind, whether owned or leased, and used, or held for use, directly or indirectly in the operation of a public utility, which shall include but not necessarily be limited to the following business entities, whether corporate or otherwise: . . . (3) passenger, sleeping, freight and private car companies which is hereby defined as any business, other than a railroad company, which owns, uses, furnishes, leases, rents or operates to, from, through, in or across this state or any part thereof any kind of railroad car, including but not necessarily limited to, flat, tank, refrigerator, passenger, or similar type cars . . .'

Under the provisions of T.C.A. ss 67-901 et seq., the Tennessee Public Service Commission is directed to assess for taxation the property of business enterprises such as those described above, together with railroad companies, telephone and telegraph companies, and numerous others. T.C.A. s 67-905 requires passenger, sleeping, freight or private car companies to furnish specific data to the Commission for the purpose of making its assessments.

The Commission is required to assess all operating property of the companies listed in T.C.A. s 67-901 at fifty-five percent of its value. The statute requires that the value shall be determined by the 'unit rule of appraisal where applicable.'^[FN1] T.C.A. ss 67-922

et seq. contain formulas and other factors to be utilized by the Commission in arriving at the distributable property assessment of companies such as appellant, and the assessment is then to be apportioned to local taxing districts by methods which are not here in question.

FNI. T.C.A. s 67-902.

Appellant does not contest the propriety of the assessment of its properties by the Tennessee Public Service Commission, and as the case comes here, raises no question as to the apportionment methods used. Appellant insists, however, that it is not a 'public utility' as that term is usually defined, and it contends that its property should be assessed at thirty percent of value as tangible industrial and commercial personal property are generally assessed under the provisions of T.C.A. s 67-616(b).

Prior to January 1, 1973 the Tennessee Constitution required uniformity of property taxation, and all classes and categories of property were to be assessed equally. There was no provision in the state constitution for the classification of property according to use. Even under the constitutional provisions as they existed prior to 1973, however, the Public Service Commission was required to assess for taxation the distributable properties of companies such as the appellant, railroad companies, truck lines, etc.

The 1973 amendment to the Tennessee Constitution specifically authorized the classification of property according to use. This was the purpose, spirit and intent of the amendment. It expressly authorized the classification of real property into four subclassifications, and tangible personal property into three categories. The General Assembly was left with broad discretion as to the classification and assessment of intangible personal property.

Properties of companies such as appellant for many years prior to the recent constitutional amendment had been assessed according to the 'unit rule' referred to in T.C.A. s 67-902. Public utility properties of all types, real, tangible and intangible, continue to be assessed under this method pursuant to the new constitutional provisions and implementing statutes, at a uniform ratio of fifty-five percent. Industrial and commercial real property is assessed at forty percent of value, while tangible commercial and industrial personalty is assessed at thirty percent of

value.

As stated, the thrust of appellant's position is that it is not a 'public utility' as that term is usually defined, and that the equipment here involved is leased to shippers and other companies which are not *214 themselves utilities or engaged directly in the transportation business. The stipulation of fact shows that all cars belonging to appellant which are leased directly to railroad companies are assessed to those companies as utility property. The assessment here in question, however, involves only properties leased to private businesses, such as those engaged in the shipping of meat and other products requiring special types of equipment. Appellant insists that it is not a utility, and that to classify its property as utility property is arbitrary, unreasonable and violative of the equal protection provisions of the Fourteenth Amendment to the United States Constitution.

We are unable to accept the contention of appellant. It owns and uses its rolling stock for the specific purpose of transporting property over railroad lines, in direct competition with and for identical purposes as property owned and operated by the railroads themselves. The arguments made by appellant in this case are similar to those which have been made by the suppliers of railroad equipment for nearly a century, and these have been almost uniformly rejected by the state and federal courts.[FN2] In two leading cases decided in 1891, the United States Supreme Court held that the states had power to tax sleeping car companies on the basis of their ownership of property within the states, and that the tax could be apportioned within the state on a mileage basis among the counties. See Pullman's Palace Car Co. v. Pennsylvania, 141 U.S. 18, 11 S.Ct. 876, 35 L.Ed. 613 (1891); Pullman's Palace Car Co. v. Hayward, 141 U.S. 36, 11 S.Ct. 883, 35 L.Ed. 621 (1891).

FN2. Appellants rely heavily upon the case of Crystal Car Line v. State Tax Comm'n, 110 Utah 426, 174 P.2d 984 (1946). In that case, however, there was an absence of a statutory definition of utilities or utility property, unlike the present case. There was no holding that the state lacked power to classify rolling stock of car companies as utility property and no suggestion that such classification would have been improper. There was simply an absence of statutory definition or classification for the first two

tax years in issue. This was supplied and upheld as to later years.

While we have not made an exhaustive examination of state statutes on this subject, we find that several states classify private car companies for tax purposes with railroads and other public utilities. See Arizona Rev.Stat. s 42-136 (1975 Supp.); Colorado Rev.Stat. s 39-4-101 (1974). The taxing statutes of both of these states are similar to the Tennessee statutes here under consideration. In the recent case of Apache County v. Atchison, Topeka & Santa Fe Ry., 106 Ariz. 356, 476 P.2d 657 (1970),[FN3] the classification of railroad properties at sixty percent of value, as against the assessment of other utility properties at forty percent of value, was sustained. Properties of 'private car companies' were classified and taxed in an identical manner to railroad property under the Arizona statutes.

FN3. App. dismissed, 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed.2d 542 (1971).

In other states freight car lines, sleeping car companies and other furnishers of railroad equipment constitute separate or independent classifications for purposes of taxation, as previously mentioned. See 51 Code of Ala. ss 176-177 (1974 Supp.); So.Dak.Comp.Laws s 10-31-1 (1967); Neb.Rev.Stats. ss 77-624 et seq. (1971). In some states, for other purposes than taxation, they are regulated under the general laws governing railroads and other utilities. See So.Dak.Comp.Laws s 49-3-3 (1967).

As recognized by this Court in the recent case of Snow v. City of Memphis, 527 S.W.2d 55 (Tenn.1975), the states have very broad discretion in the classification of property for the purpose of taxation. A classification must be neither capricious nor arbitrary, but must rest upon some reasonable basis. It is not required, however, to be mathematically precise or exact.

In the Snow case, Supra, the Court quoted from the opinion of the United States Supreme Court in the case of Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959), as follows:

'The States have a very wide discretion in the laying of their taxes. When dealing*215 with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating

(Cite as: 536 S.W.2d 212)

the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value.' 358 U.S. at 526-27, 79 S.Ct. at 440.

[1] The Tennessee statutes do not attempt to assess or tax property according to ownership, but according to use. The equipment of appellant is clearly used in the transportation of property over railroad lines, and, in our opinion, there is nothing either arbitrary, illegal or unreasonable in classifying the rolling stock of freight car companies in the same category as the equipment owned by the railroads themselves. Were this not done, it would be possible for every railroad or shipper to lease its equipment from a rolling stock company, and to require the property of the latter to be assessed only as industrial or commercial property. We recognize, of course, that the Tennessee statutes now expressly provide that leased personal property used by a public utility company shall be assessed to that company. T.C.A. s 67-602(5). Further, even prior to the adoption of the present statutory provisions, and under statutes implementing the earlier constitutional provisions, this Court held that equipment leased to public utilities was properly includable in the assessment of the lessees. Pulaski Highway Express, Inc. v. Dunn, 524 S.W.2d 636 (Tenn.1975).

As to properties not directly leased to railroads, it again is obvious that leasing devices or arrangements could easily be contrived so as to achieve a lower assessment ratio, if rolling stock such as that involved here were not classified and assessed in the same manner as equipment owned and operated by the railroads themselves. We are firmly of the opinion that the classification used by the Tennessee General Assembly is an appropriate one, has a reasonable and highly practical basis, and that it offends neither federal nor state constitutional provisions.

In the case of General American Tank Car Corporation v. Day, 270 U.S. 367, 46 S.Ct. 234, 70 L.Ed. 635 (1926), the United States Supreme Court upheld, as against a federal constitutional attack, a Louisiana tax on rolling stock of a tank car company which was four mills higher than the level of state property taxes generally. In the case of Almer Railway Equipment Co. v. Commissioner of Taxation, 213 Minn. 62, 5 N.W.2d 637 (1942) app. dismissed 317 U.S. 605, 63 S.Ct. 524, 87 L.Ed.2d 491 (1943), a gross earnings tax on freight line companies was upheld, even though the freight companies were required to pay a greater tax with reference to their rolling stock than was required of the railroad companies themselves. A similar tax on sleeping car companies had earlier been upheld in State v. Pullman Company, 146 Minn. 458, 179 N.W. 224 (1920) app. dismissed 257 U.S. 663, 42 S.Ct. 45, 66 L.Ed. 423 (1921).

[2] We recognize that the State may not by legislative fiat convert a private corporation into a 'public utility' for all purposes, as held in a number of cases cited by appellant.[FN4] In our opinion, Tennessee has not attempted to do this, and appellant is not *216 deemed to be or classified as a 'utility' for most purposes. The statutes in question deal only with the classification of property for tax purposes according to its use. The property here under consideration is placed in the same general category as that of all other companies engaged in the business of transporting persons and property by rail.

FN4. Smith v. Cahoon, 283 U.S. 553, 51 S.Ct. 582, 75 L.Ed. 1264 (1931); Frost v. Railroad Comm'n, 271 U.S. 583, 46 S.Ct. 605, 70 L.Ed. 1101 (1926); Mich. Pub. Utilities Comm'n v. Duke, 266 U.S. 570, 45 S.Ct. 191, 69 L.Ed. 445 (1925). None of these cases dealt with the classification of property for tax purposes.

[3] The properties of appellants are held and furnished directly for use upon railroad lines. Some of the railroad companies operating in this state recently contended in the federal courts that their own property should not be taxed as utility property, but should only be placed in the industrial or commercial category.[FN5] That contention was held to be one that properly should be addressed to the legislature, not the courts. We reach the same conclusions as to the contentions of appellants.

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FN5. L. & N.R.R. Co. v. Atkins, 390
F.Supp. 576 (M.D.Tenn.1975), aff'd 423
U.S. 802, 96 S.Ct. 10, 46 L.Ed.2d 24 (1975).

The judgment of the chancellor is affirmed at the cost of appellants.

FONES, C.J., and COOPER, BROCK and HENRY,
JJ., concur.
Tenn. 1976.
General American Transp. Corp. v. Tennessee Bd. of
Equalization
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END OF DOCUMENT

6. As a governmental entity, TVA is not bound by zoning.
7. While TVA owned the property, a group led by Mountain States Health Alliance ("MSHA") contracted to buy the property, contingent on a zoning change to MS-1.
8. The zoning change to MS-1 requested by the MSHA group was rejected by the Johnson City City Commission, which was upheld on appeal to Chancery Court.
9. The terms of the TVA auction included a requirement for a one year lease at \$100,000 rent, with the developer bearing costs of insurance and taxes.
10. The terms of the TVA auction included no contingency for rezoning.
11. The Comprehensive Land Use Plan for Johnson City at the time of the purchase identified the property to be later zoned RTP (Research Technology Park).
12. The improvements on the property were removed on or about January 27, 2005.
13. No rent for the property has been paid to the owner since 2004.
14. The City of Johnson City has failed to issue a building permit as requested by Stewart Taylor for R-4 development.
15. The Johnson City City Commission denied the rezoning request for PB on November 17, 2005.
16. The Johnson City City Commission on November 17, 2005 directed the Planning Staff to recommend a zoning for the property.
17. On December 13, 2005, the Johnson City Planning Commission rejected the Planning Staff recommendation for a RTP zoning.
18. On January 5, 2006, the City Commission voted on first reading to zone the property RTP.
19. As of August 30, 2006, the property remains R-4 zoned.

II. Contentions of the Parties

The taxpayer contended that subject property should be subclassified and valued as follows:

<u>Tax Year</u>	<u>Subclassification</u>	<u>Value</u>
2004	Commercial	\$170,000
2005	Residential	\$430,000
2006	Residential	\$475,000

In support of this position, the testimony and appraisal reports of David W. Harris, MAI were entered into evidence.¹ Mr. Harris summarized the basic assumptions applicable to each appraisal report in a letter of transmittal to Gary Keys dated April 12, 2004 which provided in relevant part as follows:

Attached is an appraisal of the referenced land, effective April 4, 2004, the last date of inspection. This property is exceptionally well located in the southwest corner of the intersection of West Market and State of Franklin, in Johnson City. It is improved with the T.V.A. customer service center and attached warehouse. However T.V.A. has reported they will vacate these premises within the next year and the buildings are scheduled for demolition. These buildings and other improvements to the property are not included in this appraisal.

This property is currently zoned R-4; Residential Use. The obvious best use of the land is for highway commercial development. However the land has not been rezoned for commercial use and this appraisal is based on the assumption the existing residential zoning will not be changed. . . .

In the event this land is rezoned for commercial development there will be a significant change in value.

The effective dates of Mr. Harris' other appraisal reports were January 1, 2005 and January 1, 2006.

In each case, Mr. Harris' conclusions of value were based upon an analysis of comparable sales. Mr. Harris included the following language in each report in explaining his various conclusions of value:

The obvious best use of the subject land is for highway commercial development. However, assuming restriction to residential development its value is greatly reduced as indicated by the foregoing residential land sales. . . .

With respect to the issue of subclassification, the taxpayer argued that his purchase was speculative insofar as he hoped to develop the property commercially. Given the fact that the City of Johnson City has yet to rezone subject property, the taxpayer asserted that its most suitable economic use on January 1, 2005 and January 1, 2006 was for residential development. The taxpayer did not contest the commercial subclassification for tax year 2004 because of the income generated by the lease with TVA.

The assessor of property summarized his position in collective exhibit #8 which provided in pertinent part as follows:

The assessor's office is of the opinion the highest and best use for this property is for commercial development. Zoning alone may not be the highest contributing factor in determining market value

¹ Mr. Harris prepared a separate appraisal report for each tax year.

of this property. The location and the best use and the purchase price would be the best indicators of market value. . . .

On the day of the auction the city of Johnson City's finale [sic] bid was \$3,110,000, [sic] Mr. Taylor's bid of \$3,110,000 was the winning bid. The appraised value by the assessor's office of \$2,996,900.00 for the land is reflective of the purchase price. It is the opinion of the assessor's office the purchase price establishes market value. . . .

In addition to the foregoing, Mr. Sims testified that the current land appraisal equated to \$8.00 per square foot which is consistent with the valuation of a shopping center located across the street from subject property. Finally, Mr. Sims explained that the valuation of subject improvements was derived from the State of Tennessee Computer-Assisted Appraisal System.²

III. Analysis

Since the taxpayer is appealing from the determination of the Washington County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

A. Tax Year 2004

As previously indicated, the taxpayer did not contest the appropriateness of a commercial subclassification for this particular tax year. Thus, the only issue before the administrative judge for tax year 2004 concerns value.

For ad valorem tax purposes, the basis of valuation is set forth in Tenn. Code Ann. § 67-5-601 which provides in pertinent part as follows:

(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 values. . . .

(b) It is the legislative intent hereby declared that no appraisal hereunder shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.

* * *

² This system is commonly referred to by the acronym "CAAS".

In addition, Tenn. Code Ann. § 67-5-602(b) provides as follows:

For determining the value of real property, such manuals shall provide for consideration of the following factors:

- (1) Location;
- (2) Current use;
- (3) Whether income bearing or non-income bearing;
- (4) Zoning restrictions on use;
- (5) Legal restrictions on use;
- (6) Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
- (7) Inundated wetlands;
- (8) Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land. As used in this subdivision (b)(8), "crops" includes trees; and
- (9) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

As the administrative judge noted at the hearing, the State of Tennessee Assessment Manual approved by the State Board of Equalization on November 1, 1972 is generally recognized as the manual being referred to in the above statutes.

Respectfully, the administrative judge finds that Mr. Harris' appraisal cannot be adopted as the basis of valuation for this particular tax year. The administrative judge finds that January 1, 2004 constituted the relevant assessment date pursuant to Tenn. Code Ann § 67-5-504(a). The administrative judge finds that Mr. Harris appraised subject property as of April 4, 2004.

The administrative judge finds that the instant case involves one of those relatively rare situations where an appraisal made as of January 1, 2004 would result in a significantly higher conclusion of value than one made as of April 4, 2004. In particular, Mr. Harris testified that on January 1, 2004 he was not aware of the fact that TVA had indicated it would vacate the premises within the next year and demolish the buildings. The administrative judge finds Mr. Harris conceded that his conclusion of value would have been much higher on January 1, 2004 because he would have considered the income stream from the lease with TVA. Indeed, Mr. Harris stated that he would not have normally restricted his appraisal to residential use based upon the facts known to him on January 1, 2004. The administrative judge finds that events occurring after the assessment date are not normally relevant for that tax year. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of

showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3.

Interestingly, the appeal form filed with the State Board of Equalization on September 7, 2004 for tax year 2004 asserts a value of \$900,000 based upon the lease income paid by TVA. The appeal form was signed by Mr. Taylor. Mr. Taylor was not present at the hearing.

B. Tax Years 2005 and 2006

The administrative judge finds that in this case the value of subject property for ad valorem tax purposes is effectively a function of its subclassification. The administrative judge finds that the subclassification issue, in turn, depends on the resolution of two issues. First, was the taxpayer's purchase of subject property on December 30, 2003 for \$3,110,000 a speculative purchase? Second, should the assessor be precluded from subclassifying subject property commercially because the taxpayer has not yet succeeded in obtaining commercial zoning?

The administrative judge finds that in the various appeal forms he signed, Mr. Taylor characterized his purchase as "highly speculative" because it was "based on potential commercial development." Respectfully, the administrative judge finds that such an assertion standing alone does not establish that the purchase was "speculative" within the meaning of Tenn. Code Ann. § 67-5-601(a). The administrative judge finds Mr. Taylor was not present to testify or undergo cross-examination and no testimony was offered from anybody with personal knowledge of the transaction. Absent such additional evidence, the administrative judge finds it inappropriate to conclude that Mr. Taylor's purchase of subject property was "speculative" within the meaning of Tenn. Code Ann. § 67-5-601(a).

Even assuming arguendo that Mr. Taylor's purchase was speculative, the critical inquiry concerns whether a residential or commercial subclassification is more appropriate under Tenn. Code Ann. § 67-5-801(c) which provides as follows:³

- (1) All real property which is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:
 - (A) Immediate prior use, if any;
 - (B) Location;
 - (C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;
 - (D) Other legal restrictions on use;
 - (E) Availability of water, electricity, gas, sewers, street lighting, and public services;

³ The administrative judge finds that subject property was being held for use on January 1, 2005 and vacant on January 1, 2005.

- (F) Size;
- (G) Access to public thoroughfares; and
- (H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2) If, after consideration of all such factors, any such real property does not fall within any of the foregoing definitions and classifications, such property shall be classified and assessed as farm or residential property.

The administrative judge finds that except for the fact subject property is currently zoned residentially, none of the factors enumerated above militate in favor of a residential subclassification. The administrative judge finds the fact the taxpayer has not yet succeeded in obtaining a zoning change does not foreclose a commercial subclassification. The administrative judge finds that reasonably anticipated zoning changes often "drag out" for several years. Indeed, the stipulations of fact indicate that the request for PB (Planned Business) zoning was not even denied until November 17, 2005. See stipulation #15. Moreover, on January 5, 2006 the City Commission voted on first reading to zone the property RTP (Research Technology Park). See stipulation #18. Thus, on January 1, 2006, commercial rezoning was still being actively considered by the City of Johnson City.

The administrative judge finds that for purposes of subclassification zoning should be considered in the same manner as in a highest and best use analysis. The administrative judge finds that the Appraisal Institute addresses this issue as follows:

. . . The appropriateness of current zoning and the reasonable probability of a zoning change must be considered. Highest and best use recommendations may rely on the probability that such a change will occur. The appraiser may interview planning and zoning staff and study patterns of zoning change to assess the likelihood of a change. The appraiser can generally eliminate those uses that are clearly not compatible with existing uses in the area as well as uses that have previously been denied. After reviewing available public and private land use information, the appraiser may also prepare a forecast of land development for the area. If the zoning of the subject site is not compatible with the probable forecast uses, the likelihood of a change in the zoning is especially high and speculative. The appraiser should recognize, however, that a zoning change is never 100% certain and should alert the client to that fact if it is relevant to the purpose of the appraisal.

Appraisal Institute, *The Appraisal of Real Estate* at 194-95 (12th ed. 2001).

The administrative judge finds Mr. Harris testified he was instructed to assume that the existing residential zoning will not be changed. The administrative judge finds Mr. Harris did not reach this conclusion after conducting his own highest and best use analysis. The administrative judge finds that the taxpayer simply introduced no evidence concerning the probability that commercial zoning will or will not ultimately be approved. Absent such

proof, the administrative judge finds that the preponderance of the evidence supports the conclusion that on the relevant assessment dates commercial rezoning could reasonably be assumed.

Given the foregoing, the administrative judge finds that the assessor properly subclassified subject property commercially for tax years 2005 and 2006. The administrative judge finds that since Mr. Harris assumed residential use constituted the highest and best use on the relevant assessment dates, his conclusions of value cannot provide a basis of valuation. Accordingly, the administrative judge finds that the current appraisals of subject property for tax years 2005 and 2006 must be affirmed based upon the presumptions of correctness attaching to the decisions of the Washington County Board of Equalization.

In concluding that subject property should remain subclassified commercially, the administrative judge finds one component of Mr. Sims' testimony perplexing. The administrative judge finds Mr. Sims testified that it is "office policy" to subclassify unused property (and presumably held property) residentially even when commercial use constitutes the immediate most suitable economic use. The administrative judge finds Mr. Sims stated that the decision to retain subject property's commercial subclassification was made by Mr. Treadway. Unfortunately, Mr. Treadway was not present to testify. Absent additional proof, the administrative judge cannot reach any conclusions other than the fact the subject property has been subclassified commercially in accordance with Tennessee law.

ORDER

It is therefore ORDERED that subject property be subclassified commercially and the following values and assessments are hereby adopted for tax years 2004 through 2006:

<u>TAX YEAR</u>	<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
2004	\$2,996,900	\$225,700	\$3,222,600	\$1,289,040
2005	\$2,996,900	\$ 36,500	\$3,033,400	\$1,213,360
2006	\$2,996,900	\$ 0	\$2,996,900	\$1,198,760

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

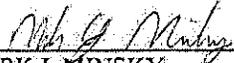
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "must be filed within thirty (30) days from the date the initial decision is sent." Rule 0600-1-12

of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. 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 15th day of September, 2006.



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

c: T. Arthur Scott, Esq.
Monty Treadway, Assessor of Property

Addenda

the rear setback shall be 40 feet, or greater as may be required by the Board of Zoning Appeals, for any special exception.

3. Side Setback: the minimum building setback from the side property line shall be five feet, provided that the side setback shall be 20 feet, or greater as may be required by the Board of Zoning Appeals, for any special exception.

H. Maximum Height of Structures: Unless otherwise explicitly allowed in other articles of this Resolution, all structures shall be no greater than 35 feet higher than the highest natural grade immediately adjacent to the structure.

Section 9.4 C – Commercial District. It is the purpose and intent of this district to regulate commercial and other development of high to medium density around the cities of Alcoa and Maryville, consistent with the overall purposes of this Resolution contained in Article 3, consistent with provisions in Public Chapter 1101 of 1998 (Tennessee Code Annotated Section 6-58-101, *et seq*), and consistent with plans adopted by Blount County.

A. Permitted Uses: General retail sales and rental of goods, merchandise, and equipment; Restaurants, taverns, drinking establishments, and nightclubs; Medical and general offices, e.g., dentists, physicians, attorneys, real estate, insurance, etc.; Automotive and marine craft sales and services; Hotels, motels, rooming and boarding houses, bed and breakfast, campgrounds; Social and fraternal clubs and lodges, union halls, and similar uses; Golf driving ranges, miniature golf courses, and similar uses; Service stations, motor vehicle repair and body shops; Convenience stores with vehicle fuel sales; Mobile home sales; Kennels and veterinarian services; Miscellaneous public and semi-public facilities including post offices; Dry cleaners and laundromats; Commercial greenhouses; Manufacturing, processing, creating, repairing, and assembly of goods, where all activities are conducted within a fully enclosed building; Hospitals, clinics, and other medical facilities; Churches, temples and similar places of worship with accessory structures, uses and cemeteries; Bowling alleys, skating rinks, indoor tennis and racquet ball courts, billiard halls, indoor athletic facilities; Public and private recreational activities conducted primarily outside enclosed buildings; Commercial cemeteries not associated with any on-site place of worship; any use permitted or listed as permissible as a special exception in Sections 9.1.A and 9.1.B.

B Uses Permitted as Special Exceptions: Scrap materials salvage and recycling, salvage yards, junkyards, automobile graveyards; any other commercial activity not listed in subsection A above.

C. Uses Permitted as Special Exceptions with Specific Limitations: none.

D. Uses Prohibited: In the C – Commercial District, all uses are prohibited except those uses permitted specifically or by special exception by the Board of Zoning Appeals.

E. Uses Requiring Site Plan Review: All uses permitted as special exception in subsections B and C above, and customary accessory structures. Permitted uses in subsection A above and customary accessory structures, except one or two single family or manufactured home dwelling on a single lot, duplex dwelling on separate lot, and customary accessory structures to such excepted uses.

F. Minimum Lot Size and Density: For residential structures as required in Section 9.1.F. All commercial lots shall be adequately sized to accommodate necessary parking requirements, setbacks, buffering, and soils requirements for any on-site septic disposal.

G. Setback Requirements: All uses permitted or permitted as special exception shall comply with the following setback requirements, except as otherwise provided for in Articles 3 and 5 for lots of record and nonconforming situations.

1. Front Setback: the minimum depth of the front building setback shall be 30 feet from any road right-of-way or easement line, with the following exceptions: (a) the lot fronts on an arterial road as shown on the Major Road Plan of Blount County, in which case the front setback shall be 60 feet for principal arterial roads and 40 feet for major arterial roads, and (b) the lot has been previously platted on a plat registered with the Blount County Register of Deeds prior to the enactment of this Resolution in which case the minimum shall be no less than 20 feet or the platted setback, whichever is greater.

2. Rear Setback: the minimum building setback from the rear property line shall be 20 feet for the principal structure, and five feet for any accessory structure, provided that the rear setback shall be 40 feet, or greater as may be required by the Board of Zoning Appeals, for any non residential use or special exception with a rear property line abutting a residential use lot, or abutting a lot in the S, R-1 or R-2 zone.

3. Side Setback: the minimum building setback from the side property line shall be five feet, provided that the side setback shall be 20 feet, or greater as may be required by the Board of Zoning Appeals, for any non residential use or special exception with a rear property line abutting a residential use lot, or abutting a lot in the S, R-1 or R-2 zone.

H. Maximum Height of Structures: Unless otherwise explicitly allowed in other articles of this Resolution, all structures shall be no greater than 35 feet higher than the highest natural grade immediately adjacent to the structure.

Section 9.5 IND – Industrial District. It is the purpose and intent of this district to regulate industrial and other development of high to medium density around the cities of Alcoa and Maryville, consistent with the overall purposes of this Resolution contained in Article 3, consistent with provisions in Public Chapter 1101 of 1998 (Tennessee Code Annotated Section 6-58-101, *et seq*), and consistent with plans adopted by Blount County.

A. Permitted Uses: Excavation of minerals, rock, stone, sand, gravel, or top soil for mining purposes; Use of land and structures for manufacturing, mining, and related and similar operations with indoor and outdoor operations, and general manufacturing, creating, repairing, painting, cleaning and assembly of goods, merchandise and equipment; Fabrication of metal products, furniture, and fixture manufactory; Food production, textile mill production, apparel and other finished products made from fabrics, leather and similar materials; Lumber and wood product manufacturing; Professional and highly scientific and technical production; All types of wholesale trade industry.

- B. Uses Permitted as Special Exceptions: Scrap and salvage operations, automobile wrecking, or junkyards; Paper or similar product manufacturing; Sanitary landfills and other waste disposal systems subject to the approval of Tennessee Department of Public Health and other applicable government agencies; any other industrial use not specified in subsection 9.5.A above.
- C. Uses Permitted as Special Exceptions with Specific Limitations: none.
- D. Uses Prohibited: In the IND – Industrial District, all uses are prohibited except those uses permitted specifically or by special exception by the Board of Zoning Appeals.
- E. Uses Requiring Site Plan Review: Permitted uses in subsection A above, all uses permitted as special exception in sub-sections B and C above, and any accessory structures to such uses.
- F. Minimum Lot Size and Density: All industrial lots shall be adequately sized to accommodate necessary parking requirements, setbacks, buffering, and soils requirements for any required on site septic disposal.
- G. Setback Requirements: All uses permitted or permitted as special exception shall comply with the following setback requirements, except as otherwise provided for in Articles 3 and 5 for lots of record and nonconforming situations.
1. Front Setback: the minimum depth of the front building setback shall be 40 feet from any road right-of-way or easement line, except when the lot fronts on a principal arterial or major arterial road as shown on the Major Road Plan of Blount County, in which case the front setback shall be 60 feet.
 2. Rear Setback: the minimum building setback from the rear property line shall be 40 feet, provided that the rear setback may be greater as may be required by the Board of Zoning Appeals for an industrial lot with a rear property line abutting a residential use lot, or abutting a lot in the S, R-1 or R-2 zone.
 3. Side Setback: the minimum building setback from the side property line shall be 40 feet, provided that the side setback may be greater as may be required by the Board of Zoning Appeals for an industrial lot with a side property line abutting a residential use lot, or abutting a lot in the S, R-1 or R-2 zone.
- H. Maximum Height of Structures: Unless otherwise explicitly allowed in other articles of this Resolution, all structures shall be no greater than 35 feet higher than the highest natural grade immediately adjacent to the structure, provided that the Board of Zoning Appeals may waive this requirement if the industrial operation or process requires a greater height.

Section 9.6 AIR – Airport District. McGhee Tyson Airport and the immediately surrounding area, is under the control of the Metropolitan Knoxville Airport Authority, with independent planning, policing, fire protection, building code enforcement, and regulation by state and federal entities. The airport is of regional significance and contains a unique and interrelated mix of airport, governmental and commercial uses. In recognition of the unique nature of the district, and

Roane

Knox

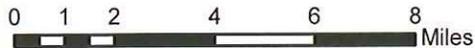


Sevier

Loudon

Blount

Monroe



Blount County Land Use

-  <all other values>
-  RES
-  COM
-  IND
-  AGRI
-  FARM
-  FOREST
-  major_st
-  tn_county

