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RE: ASCEND RENTALS LLC V. SUMNER COUNTY ASSESSOR'S OFFICE, APD Case No. 53.02-253615J

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

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

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

IN THE MATTER OF:	**APD Case No. 53.02-253615J**
ASCEND RENTALS LLC, ***Petitioner,***	**No./Parcel: 148585 / 114K D 01400 000** **148586 / 163C D 01400 000** **148587 / 159H E 00600 000** **148588 / 147A C 04800 000** **148589 / 147A C 03800 000** **148590 / 159N C 01500 000** **Tax Years 2025 & 2026**
v.	
SUMNER COUNTY ASSESSOR'S OFFICE, ***Respondent.***	

INITIAL DECISION AND ORDER

The case comes before Administrative Judge Alexander S. Rieger[1] to determine whether the six real property parcels identified in the caption above should be subclassified as residential property or as commercial property. The subject properties have historically been subclassified as residential property. Respondent, the Sumner County Assessor's Office, changed the subclassification from residential to commercial for tax years 2025 and 2026.

Taxpayer, Ascend Rentals LLC, appealed the change to the Sumner County Board of Equalization (County Board), which upheld the reclassification. Taxpayer appealed to the Tennessee State Board of Equalization (State Board) on June 2, 2025. Based on the findings of fact and conclusions of law below, it is determined that Taxpayer proved by a preponderance of the evidence that the subject properties should be subclassified as residential property. Accordingly, it is determined that the appropriate subclassification for the subject properties is residential.

[1] Administrative Judge Rieger is an independent and neutral administrative judge assigned by the Tennessee Secretary of State's Administrative Procedures Division to preside over the case and issue this Initial Decision and Order on behalf of the Tennessee State Board of Equalization. TENN. CODE. ANN. § 67-5-1505.

HEARING

Administrative Judge Rieger conducted a videoconference hearing with the parties on February 19, 2026. Taxpayer was represented by attorney William S. Carman. Respondent was represented by attorney Stephanie Coleman.[2] Sumner County Assessor John Hurt and Taxpayer's owner and registered agent Alvin Hale testified credibly. By agreement of the parties, the hearing transcript was filed, and the parties filed briefs and proposed findings of fact and conclusions of law on or before April 10, 2026. The parties filed a joint motion to amend the appeal to include tax year 2026. That motion was granted on June 1, 2026.

FINDINGS OF FACT

1. Taxpayer is a limited liability company formed and doing business in Tennessee.

2. Taxpayer owns 16 residential rental properties across Tennessee. Six are located in Sumner County and are the subject of this appeal. They are identified as Parcel Nos. 114K D 01400 000, 163C D 01400 000, 159H E 00600 000, 147A C 04800 000, 147A C 03800 000, and 159N C 01500 000 (collectively, the "subject properties").

3. Each of the subject properties is a single parcel of real property containing not more than one rental unit. Each parcel contains one single-family home rented as a single unit.

4. The subject properties are located throughout Sumner County. They are not in the same neighborhood or part of a planned subdivision.

5. Taxpayer owns each of the subject properties as a stand-alone parcel. No covenants or other restrictions limit the ability to sell each parcel independently of the others.

6. Taxpayer acquired the subject properties from its member owners.

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[2] Both counsel are commended for their excellent preparation and presentation of an enormously nuanced and complex issue.

7. Taxpayer's Tennessee rental properties generate more than $26,000 of rental income each month.

8. Taxpayer contracted with a single property management company, Halo Realty, to manage its rental units, including the subject properties.

9. Taxpayer receives a single check each month from Halo Realty representing the collective income minus expenses generated by its entire rental portfolio.

10. Assessor Hurt is the newly-elected Assessor of Property for Sumner County, Tennessee. Before that, he worked for the Assessor, beginning in October 1996.

11. To determine whether a property is owned by a limited liability company or other business entity, the Assessor begins with reviewing a database of every parcel in Sumner County. The Assessor uses the database to determine if there is common ownership of multiple parcels by a business entity.

12. A similar process is used to determine common ownership of multiple parcels by individual owners.

13. Identification of parcel ownership is a moving target. There are over 85,000 parcels in Sumner County, and the Assessor works daily to keep track of new parcels, new ownership, parcels changing hands, etc.

14. Besides the subject properties, Taxpayer owns other rental properties in Sumner County that were subclassified as residential. The Assessor explained that the process of identifying parcel ownership is "always in flux" and that sometimes mistakes slip through.

15. For the relevant tax years, the Assessor ultimately subclassified the subject properties as commercial.

16. The Assessor explicitly disavowed classifying the subject properties as commercial due to the Taxpayer's status as a limited liability company. Instead, the Assessor subclassified the subject properties as commercial because they were income-producing properties to Taxpayer.

17. Taxpayer appealed the subclassifications of the subject properties to the Sumner County Board of Equalization which, after review, denied the requested reclassification and upheld the commercial designations. Taxpayer appealed to the State Board on June 2, 2025.

APPLICABLE LAW

Standard of Review

A party challenging the current classification of a property bears the burden of proof under the State Board rules. TENN. COMP. R. & REGS. 0600-01-.13(1). To meet that burden, the party seeking to change the classification must show that the proposed change is supported by a preponderance of the evidence. A preponderance of the evidence means "the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion." *See* TENN. COMP. R. & REGS. 1360-04-01-.02(3).

Classification Generally

The Tennessee Constitution explicitly provides that all Tennessee property "shall be subject to taxation." TENN. CONST. ART. II, § 28. For taxation, property is divided into three classes: real, tangible personal, and intangible personal. *Id. See also* TENN. CODE ANN. § 67-5-503(a). Real property is subclassified into four categories: public utility, industrial and commercial, residential, and farm. TENN. CODE ANN. § 67-5-801(a). The question presented asks whether rental single-family dwellings owned by a common owner should be subclassified as residential or industrial and commercial. The answer is significant: industrial and commercial property is assessed at 40% of value; residential property is assessed at 25% of value.

As the question calls for consideration of a constitutional amendment, statutory provisions, and a bevy of resulting decisions, a broader discussion of each is instructive.

History of Article II, Section 28 of the Tennessee Constitution

For our purposes, the history relevant to the question presented begins with the adoption of Article II, Section 28 of the Tennessee Constitution in 1973. Pursuant to Article XI, Section 3 of the Tennessee Constitution, the General Assembly proposed five questions to the electorate in Chapter 421, as amended by Chapter 597, Public Acts 1968. Only Question 3—requiring classification of property into real property, intangible personal property, and tangible personal property, and further subclassifying real property into public utility property, industrial and commercial property, residential property, and farm property—received approval of a majority of the voters in November 1968.

Voter approval of Question 3 begat a Constitutional Convention in August 1971. On September 14, 1971, the Convention adopted Resolution 74, which was approved by the voters in August 1972 and subsequently became Article II, Section 28 of the Constitution of Tennessee. Recited in pertinent part, that amendment provides:

> Real property shall be classified into four (4) subclassifications and assessed as follows:
>
> a. Public Utility Property, to be assessed at fifty-five (55%) percent of its value;
>
> b. Industrial and Commercial Property, to be assessed at forty (40%) percent of its value;

> c. Residential Property, to be assessed at twenty-five (25%) percent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and
>
> d. Farm Property, to be assessed at twenty-five (25%) percent of its value.

TENN. CONST. ART. II, § 28.

Statutory Codification of Article II, Section 28

Statutory codification quickly followed the adoption of Article II, Section 28. *See* 1973 Pub. Acts, c. 226, § 6. Tennessee law currently requires that real property "be classified according to use." TENN. CODE ANN. § 67-5-801(a). Real property is deemed residential when it is "used, or held for use, for dwelling purposes" and it "contains not more than one (1) rental unit." TENN. CODE. ANN. § 67-5-501(11).

Industrial and commercial real 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." TENN. CODE ANN. § 67-5-501(4). Real property "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.'" *Id*.

Challenge to the Amendment—Snow v. City of Memphis

This amendment was immediately challenged after its enactment for allegedly exceeding the call of Question 3 and violating the equal protection clause of the 14th Amendment to the United States Constitution when the amendment allegedly created a fifth classification of real property by providing that real property consisting of two or more rental units is subclassified as industrial and commercial property.

That challenge ultimately met its demise at the Tennessee Supreme Court in *Snow v. City of Memphis*, 527 S.W.2d 55 (Tenn. 1975). The Court first determined that Question 3 did not prohibit the rental property language of Article II, Section 28, and that the amendment therefore did not exceed the call of the question. *Id.* at 64.

The Court next (and lastly) determined that the amendment did discriminate in favor of real property owners who either reside in one-half of a duplex and rent the other and owners who rent one or more single-family residences. The Court found that discrimination was constitutionally permissible as neither invidious nor palpably arbitrary. Notably, the Court reasoned that "[i]t is obvious that the Convention and the people deemed it reasonable to embrace within the favored classification of a[n] owner-occupied residence, owners of additional single-family residences[,] and the owner who lives in one-half of his duplex." *Id*. at 66.

1976 Usage Cases—General American Transportation Corporation v. Tennessee State Board of Equalization and *Crown Enterprises, Inc. v. State Board of Equalization*

Having survived constitutional challenge, Article II, Section 28 and its statutory progeny almost immediately spawned two cases concerning alleged ambiguity regarding the concept of use.

To start, the Tennessee Supreme Court in *General American Transportation Corporation v. Tennessee State Board of Equalization* considered a freight car company's challenge to the public utility property subclassification of its property. The company argued that it was not a public utility, and therefore its equipment should not be subclassified as public utility property. The

Supreme Court began by characterizing Article II, Section 28 as "specifically authoriz[ing] the classification of property according to use." *Gen. Am. Transp. Corp. v. Tenn. State Bd. of Equal.*, 536 S.W.2d 212, 213 (Tenn. 1976). The Court ultimately held that "Tennessee statutes do not attempt to assess or tax property according to ownership, but according to use." *Id.* at 215. The Court determined that the property at issue was used for public utility purposes regardless of the nature of its owner and was appropriately subclassified as such.

Shortly thereafter, in *Crown Enterprises, Inc. v. State Board of Equalization*, 543 S.W.2d 583 (Tenn. 1976), the Court further expounded upon the scope of usage. Crown Enterprises utilized its real property by leasing and renting it to others. *Id. at* 584. One of its lessees was a regulated public utility that used the property at issue as a truck terminal and truck repair shop, which qualified as public utility property under the applicable statute.

Crown Enterprises argued "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." *Id*. at 585. Crown Enterprises leased the property; it wanted the property classified as industrial and commercial because—to Crown Enterprises—it was rental income-producing property. The State Board contended that "it is the actual use to which the property is put that determines its classification." *Id*. The Court agreed with the Board and held that the lessee's use of the property as public utility property compelled rejection of Crown Enterprises' position. The Court noted the *General American* holding that "it was the use to which the property was being put, not ownership of the property, that determined property classification." *Id.* The Court explained that if classification depended on ownership, a public utility "could defeat the constitutionally prescribed classification of property merely by leasing" the property required for public utility operations from a non-public utility owner of property. *Id*.

Subsequent Decisions Regarding Rental Property Classification

The issue of how to classify rental property with residential occupants appears to have evaded decision for more than twenty years after the adoption of Article II, Section 28. That is, until the issue ensnared the Tennessee Supreme Court in 1998.

Castlewood, Inc. v. Anderson County

Castlewood concerned the classification of condominium units that were part of "a real estate condominium project consisting of 86 two-bedroom units situated in 19 separate buildings containing from four to six units or apartments each." *Castlewood, Inc. v. Anderson Co.*, 969 S.W.2d 908, 909 (Tenn. 1998). Six units were subclassified as residential property based upon their sale to individual owners. The developer kept the remaining 80 units for rental purposes. Each unit was separately parceled. The developer argued that the units should be considered separate (and therefore residential), as opposed to viewed collectively as real property used for dwelling purposes with two or more rental units (and therefore industrial and commercial). The Court held that "[t]he provisions of the Horizontal Property Act do not support the taxpayer's position." *Id.*

The Horizontal Property Act defines a condominium as "the ownership of single units in a multiple unit structure or structures with common elements." TENN. CODE ANN. § 66-27-102(a)(2). It defines a condominium project as "a real estate condominium project; a plan or project whereby two (2) or more apartments, rooms, office spaces, or other units in existing or proposed building or buildings or structure or structures are offered or proposed to be offered for sale." TENN. CODE ANN. § 66-27-102(a)(3). The Court held that "[t]he buildings owned by Castlewood contain two or more rental units held for dwelling purposes." *Castlewood*, 969 S.W.2d at 909.

Spring Hill, L.P. v. Tennessee State Board of Equalization

This subject matter was next touched by the Tennessee Court of Appeals in *Spring Hill, L.P. v. Tenn. State Bd. of Equalization*. One of the three appellants, Acorn Hills, challenged the reclassification of its property from residential to commercial. Acorn Hills owned 44 detached single-family rental homes on separately parceled lots. *Spring Hill, L.P. v. Tenn. St. Bd. of Equalization*, No. M2001-02683-COA-R3-CV, 2003 WL 23099679 at *1, 17 (Tenn. Ct. App. Dec. 31, 2003). Acorn Hills argued that the homes should be subclassified as residential property because they were not multi-unit buildings. However, Acorn Hills submitted one application for low-income housing tax credits to construct the 44-unit project and had a "restrictive covenant on the land prohibiting the sale of any single unit." *Id.* at *18. Based on these factors, it was determined that Acorn Hills treated the project "as one multi-unit subdivision" that could therefore be subclassified as commercial property. *Id.*

Poovindran Pillay & King of Kings, Inc. (State Board Decision—Administrative)

In 2015, an administrative judge considered the classification of 60 residences in a planned unit development. The taxpayers did not occupy any of the residences. Instead, all properties were utilized as rental properties and separately leased to tenants. *Poovindran Pillay & King of Kings, Inc.,* (Initial Decision and Order, Knox County, Tax Year 2015, issued July 29, 2015).

The administrative judge noted that there was no dispute that the sixty residences were income-producing property. However, citing *Spring Hill*, he found that "that determination is not necessarily dispositive of the classification issue." *Id.*, at *8. Instead, the administrative judge determined that the sixty residences had many of the same characteristics of the Acorn Hill properties at issue in *Spring Hill*. Holding that the residences "are integrated economic entities that are no different than the condominiums addressed in *Castlewood* and the detached homes addressed in *Spring Hill*," the administrative judge ultimately determined that "[t]he parcels under appeal are income-producing properties to the taxpayers and properly classified as 'industrial and commercial property.'" *Id.*, at *9-10.

Attorney General Opinion

Last, but certainly not least, and also in 2025, State Senator Becky Duncan Massey requested that the Tennessee Attorney General opine as to two questions. The first question asked whether "[p]ursuant to Article II, Section 28[ ] of the Tennessee Constitution [. . .] what is the appropriate tax classification for a single-family, stand-alone property that is being rented for periods longer than thirty (30) days?" Tenn. Op. Att'y Gen. No. 25-016, 2025 WL 2597889 (Aug. 25, 2025). The second question inquired as to the "appropriate tax classification for a duplex where one half is rented and the other half is occupied by the owner." *Id.*

Citing primarily to Article II, Section 28 and TENN. CODE ANN. § 67-5-501(11), the Attorney General opined that "[i]n accordance with these provisions, a single-family, stand-alone property generally will be classified as residential when it is being used as a long-term rental." *Id.* The same answer followed for the duplex question. The Attorney General noted that "[i]n each case, the property contains only one rental unit and, thus, qualifies for the residential tax classification." *Id.*, at *2. Of note, the Attorney General cited to *Spring Hill* as an exception that prohibited a bright-line rule.

ANALYSIS AND CONCLUSIONS OF LAW

The issue in this case is whether the subject properties are properly subclassified as residential or commercial property. The relevant facts are not in dispute. Instead, this case poses questions of constitutional and statutory interpretation and application.

Principles of Interpretation and Construction

A number of principles regarding constitutional and statutory construction are implicated here. First, and most important, "is to ascertain and give effect to the [ ] intent without unduly restricting or expanding [the enactments'] coverage beyond [their] intended scope." *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)). To accomplish this, "we begin with the actual words of the [enactments], to which we accord their natural and ordinary meaning." *Martin v. Powers*, 505 S.W.3d 512, 518 (Tenn. 2016) (citing *Baker v. State*, 417 S.W.3d 428, 433 (Tenn. 2013)).

Each enactment is interpreted "as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same [enactment] inconsistent, meaningless or superfluous." *Culbreath v. First Tenn. Bank Nat'l Ass'n*, 44 S.W.3d 518, 524 (Tenn. 2001) (quoting *Cafarelli v. Yancy*, 226 F.3d 492, 499 (6th Cir. 2000)). When multiple enactments "relate to the same subject matter or have a common purpose," they are to be considered *in pari materia* (together as a unified body of law). *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015). Enactments with common cause should be construed "together" and "to give intended effect to both." *Id*. at 548, 552. Under this guidance, it is appropriate to ascertain "the most 'reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws.'" *Id*. at 552 (quoting *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997)); *see also Falls v. Goins*, 673 S.W.3d 173, 180 (Tenn. 2023).

Pseudo-Rule of Lenity in Tax Cases

Taxpayer argued that the "rule of lenity" should be applied here to guide construction of the applicable statutory and constitutional provisions. The rule of lenity, as described by the United States Supreme Court and subsequently adopted by the Tennessee Supreme Court, is "rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his [or her] conduct is prohibited." *Dunn v. United States*, 442 U.S. 100, 112 (1937); *accord State v. Richmond*, 100 S.W.2d 1, 3 (Tenn. 1937). Essentially, "to ensure that a legislature speaks with special clarity when marking the boundaries of criminal conduct, courts must decline to impose punishments for actions that are not 'plainly and unmistakably' proscribed." *Dunn*, 442 U.S. at 112-13 (quoting *United States v. Gradwell*, 243 U.S. 476, 485 (1917)).

A review of Tennessee jurisprudence has given no indication that the rule of lenity as adopted by the Tennessee Supreme Court has been expanded beyond the criminal context. Accordingly, the undersigned will decline Taxpayer's invitation to utilize the rule of lenity. Moreover, as this matter can be resolved with a plain-text reading of the applicable statutes and application of less-controversial principles of construction, the undersigned finds it unnecessary to consider a liberal construction here.

Are the Subject Properties Residential or Commercial?

The ultimate question is whether rental single-family homes are commercial or residential properties.

Taxpayer contends that the subject properties should be subclassified as residential as single-family rental homes used by their occupants for dwelling purposes that, due to their individual parceling and separated geographic locations, do not contain more than one rental unit pursuant to TENN. CODE ANN. § 67-5-501(11).

The Assessor contends that the subject properties should be classified as industrial and commercial. At trial, the Assessor testified that he classified the subject properties as commercial because they were income-producing to Taxpayer. The Assessor's post-hearing brief takes a slightly different tack, arguing that the subject properties were used for dwelling purposes but could be viewed in combination—thus consisting of two or more rental units pursuant to TENN. CODE ANN. § 67-5-501(4). Taking each in turn:

1. Does the subject properties' income-producing use for Taxpayer compel an industrial and commercial subclassification?

There is no disagreement as to what the subject properties are. They are single-family rental homes. They are used for dwelling purposes by their lessee-occupants; they are used for income-producing purposes by Taxpayer. They are not part of a common development, nor are they units within a condominium. Each home is in Sumner County.

As the facts are not in dispute, let's begin with Article II, Section 28.

Constitutional Analysis—Article II, Section 28

The critical portion of Article II, Section 28 to the issue at hand is section c, which provides that residential property is "to be assessed at twenty-five (25%) percent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property." TENN. CONST., ART. II, § 28. The fact that the category "residential property" includes a self-reflexive reference to "residential property" is unusual. But it does strongly suggest that residential property and rental (and therefore income-producing) property are not necessarily exclusive and incompatible concepts or else the exception for two or more rental units would not be necessary. After all, if rental property, by virtue of its income production for an owner, could never be residential property, then the remainder of the constitutional provision after "value" would be superfluity.

So Article II, Section 28 informs us that rental property can be residential, but that if the residential property has two or more rental units, it becomes commercial and industrial property. But that is the limit of its helpfulness. The amendment does not give guidance as to whether multiple parcels of commonly-owned rental property can be amalgamated to trigger the two-or-more rental-unit clause. The amendment also does not give guidance as to a definition of residential property. So the question is not satisfied by the text of the amendment alone, and we must look next to the effectuating statutes.

Statutory Analysis—Competing Constructions

Moving next to the applicable statutes. Real property is deemed residential when it is "used, or held for use, for dwelling purposes" and does not contain more than one rental unit. TENN. CODE. ANN. § 67-5-501(11). The statute is hardly a model of clarity. It does not define "dwelling purposes," which is unhelpful. Certainly, the lessee-resident of a rental single-family home is using the property for "dwelling purposes." But perhaps not the owner who is leasing the property.

What's worse is that the statute does not articulate "who" is using the property. The present passive tense employed by the statute does little for clarity. If the statute were active in tense, we would have a subject (an actor) and a verb ("use or held for use") with a direct object (the real property). But present passive tense only requires a receiver (subject) and a passive verb (is used)—the active subject (or "doer") is optional.

The drafters' choice to omit the optional "doer" creates ambiguity. Here, without an active subject (or "doer"), there is no indication as to who is "using" the subject property in the statutory definition. For rental single-family homes, this is significant because the statute is immediately subject to two competing constructions: 1) where the real property is used by lessee occupants to reside in; and 2) where the real property is used by the owner as income-producing property. Both are possible constructions of the statute given the absence of the doer. Taxpayer prefers the first construction; Assessor the second.

Analysis of Precedent

So how do we determine which construction is superior? Applying the rules of statutory and constitutional construction discussed above, we can next turn to precedent to see if this question has been definitively resolved with an answer by superior courts. The Supreme Court's decision in *Snow v. City of Memphis* is helpful. In resolving the equal-protection challenge, the Court's statement that "[i]t is obvious that the Convention and the people deemed it reasonable to embrace within the favored classification of a[n] owner-occupied residence, owners of additional single-family residences[,] and the owner who lives in one-half of his duplex," is somewhat helpful. It does not specifically speak to renters, but does offer insight into the intent of Article II, Section 28's drafters. *Snow v. City of Memphis*, 527 S.W.2d at 66. More helpful is the Court's articulation of the disparate treatment caused by Article II, Section 28: "[i]t is clear that there is discrimination in favor of the real property owner who lives in one-half of a duplex and rents the other half and in favor of the real property owner who *rents one or more single-family residences*." *Id*. (emphasis added). The undersigned concludes that this statement is not dicta. It was a material part of the finding that disparate treatment (i.e., discrimination) existed and formed the basis of the Court's determination that such disparate treatment was constitutionally permissible as neither "palpably arbitrary or invidious discrimination." *Id*. Accordingly, the Supreme Court's decision in *Snow* strongly (if not bindingly) supports Taxpayer's position here.

The Supreme Court also tells us that the answer to the question presented cannot depend upon ownership. *General American Transportation Corporation v. Tennessee State Board of Equalization* and *Crown Enterprises, Inc. v. State Board of Equalization* collectively stand for the general proposition that "Tennessee statutes do not attempt to assess or tax property according to ownership, but according to use." *Gen. Am. Transp. Corp. v. Tenn. State Bd. of Equal.*, 536 S.W.2d 212, 215 (Tenn. 1976); *see also Crown Enter. v. State Bd. of Equalization*, 543 S.W.2d 583, 584 (Tenn. 1976) ("it is the use to which the property was being put, not ownership of the property, that determined property classification.").

Crown Enterprises provides an interesting and instructive example that is worth a deeper dive. The Supreme Court's reasoning that a public utility could not use a lease to defeat "the constitutionally prescribed classification of property" can be applied here. Let us consider and break down the question that *Crown Enterprises* answered:

- A corporation owned real property in the form of 6.3 acres of land.
- The corporation-owner leased the real property to a regulated public utility.
- The regulated public utility utilized the leased property for public utility operations—namely, a truck terminal and repair shop.
- The corporation-owner "insist[ed] 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, which would be industrial and commercial.
- The State Board argued that the use to which the property was being put, i.e., public utility property (as used by the lessee), should determine classification.

Comparing this fact pattern to our two competing constructions of the definition of real property, there exists, at least, a loose parallel. The corporation-owner argued in *Crown Enterprises* that its use of the subject property, and not that of its lessee, should determine classification. That argument tracks the construction of the definition of real property championed here by the Assessor that seeks classification based upon Taxpayer's use of the subject property for income-producing purposes, instead of its lessees' use of the subject property for dwelling purposes. The Supreme Court in *Crown Enterprises* rejected the corporation-owner's argument; it is therefore not unreasonable to read *Crown Enterprises* to support Taxpayer's argument and favored construction of the statute here.

Combined, these precedents, statutes, and constitutional provisions are sufficient to conclude that the Assessor's position that the subject properties must be taxed as commercial and industrial property because they are income-producing to Taxpayer is incorrect. The lessee-occupants of the subject properties use them for dwelling purposes, and under *Crown Enterprises*, that is the relevant consideration. The subject property will be considered residential unless it runs afoul of the two-or-more-rental-unit exception.

2. Can the subject properties be viewed collectively for the purpose of the two-or-more-rental-unit exception to residential subclassification?

Moving now to the Assessor's second argument from its brief, that the properties should be subclassified as commercial and industrial because they can be viewed in combination and therefore would contain two or more rental units. *See* TENN. CODE ANN. § 67-5-501(4). To reiterate, the subject properties are separately-parceled, single-family rental homes. They are separated geographically from each other and are not part of the same subdivision, planned community, or condominium. So is the Assessor correct that they can be amalgamated into a single unit such that the subject properties (viewed as a whole) contain two or more rental units and must be subclassified as industrial and commercial?

Let's start again with precedent. Saving *Spring Hill* for later, *Castlewood* is largely unilluminating to the question at hand. The facts underpinning the *Castlewood* holding are starkly divergent to those at hand. The developer in *Castlewood* owned multi-unit buildings containing four to six rental units each. In our case, the subject properties are individual, single-family homes. Taxpayer does not own any single building or real property parcel containing more than one rental unit. If that was not enough to show inapplicability, the centrality of the Horizontal Property Act (implicating condominiums and other multiple unit structures) to the Supreme Court's decision in

Castlewood should caution against even a loose application of the *Castlewood* holding here. *Castlewood* is therefore inapposite.

Poovidndran Pillay & King of Kings, Inc. is a non-precedential administrative decision that is not persuasive. The decision neglected to directly grapple with Article II, Section 28, took an *unusual* foray into whether "the rental housing market has fundamentally changed since 1975," and did not reference either *Crown Enterprises* or *General American Transportation Corporation*. Its reasoning is unsatisfying (without regard to the result) and is contrary to other administrative decisions on the issues presented in that case.[3] Accordingly, it will not be given any weight.

While not controlling, the opinion of the Tennessee Attorney General is certainly persuasive. The most pertinent question asked by Senator Massey is whether "[p]ursuant to Article II, Section 28[ ] of the Tennessee Constitution [. . .] what is the appropriate tax classification for a single-family, stand-alone property that is being rented for periods longer than thirty (30) days?" Tenn. Op. Att'y Gen. No. 25-016, 2025 WL 2597889 (Aug. 25, 2025).

The Attorney General's opinion was short, primarily citing Article II, Section 28 and TENN. CODE ANN. § 67-5-501(11) to answer that "[i]n accordance with these provisions, a single-family, stand-alone property generally will be classified as residential when it is being used as a long-term rental." *Id*. This persuasive authority supports Taxpayer's position.

And yet, perhaps the brevity of the Attorney General's opinion is explainable by its citation to *Spring Hill* as an exception that prohibited a bright-line rule. And that is because *Spring Hill* is exceptionally difficult to reconcile with the above authorities.

[3] *See, e.g., Oakmont Resort Condo Assoc., Inc.* (Initial Decision & Order, Sevier Cnty., Tax Years 2019-2023, issued Oct. 3, 2024) (on appeal); and *Tom Hanrahan* (Initial Decision & Order, Roane Cnty., Tax Year 2016, issued Dec. 21, 2016).

The easy path is to simply note how distinguishable *Spring Hill* is to the facts at hand. Indeed, that seems to be the prevailing sentiment of the administrative decisions that are favorable to residential classification of rental homes. Acorn Hills owned 44 detached single-family rental homes on separately parceled lots. *Spring Hill*, 2003 WL 23099679 at *1, 17. It argued that the homes should be subclassified as residential property. However, Acorn Hills applied for low-income housing tax credits to construct the 44-unit project and agreed to a "restrictive covenant on the land prohibiting the sale of any single unit." *Id*. at *18. The Court determined that Acorn Hills treated the project "as one multi-unit subdivision" and therefore was properly subclassified as commercial property. *Id*.

In contrast, Taxpayer here did not build or purchase the subject properties as one project, and they are not located in the same development. Perhaps most importantly, the subject properties are not subject to a restrictive covenant or any other encumbrance limiting Taxpayer's ability to sell individual parcels. *Spring Hill* is therefore certainly distinguishable and inapposite.

The (much) harder approach is to wrestle with *Spring Hill*'s reasoning and try to reconcile it with *Snow*, *Crown Enterprises*, and *General American Transportation Corporation*. The *Spring Hill* homes were single-family and separately parceled. But *Snow* tells us that Article II, Section 28 discriminates "in favor of the real property owner who *rents one* ***or more*** *single-family residences*." *Snow v. City of Memphis*, 527 S.W.2d at 66 (emphasis twice added). And our Supreme Court was equally clear that property is subclassified according to its use and not its owner. *Gen. Am. Transp. Corp. v. Tenn. State Bd. of Equal*, 536 S.W.2d at 215; *Crown Enter. v. State Bd. of Equal.*, 543 S.W.2d at 584.

So how did the court in *Spring Hill* get to its result, and was the method grounded in law? Nowhere do the statutes or constitutional provisions call for a multi-factored analysis into whether a group of separately parceled single-family homes can be combined into a single unit for purposes of classification. That appears to be an extra-statutory purposivist approach not grounded in the plain language of either the statutory or constitutional provisions. To get there, the *Spring Hill* court relied upon *Castlewood*, despite the fact that *Castlewood* involved multiple units in single structure in contrast to the separately parceled single-family homes at issue. Moreover, in citing to *Castlewood*, the *Spring Hill* decision narrowly focused on *Snow*'s statement that "the purpose and objective [of Article II, Section 28] is to tax income-producing property at a higher rate than owner-occupied residences and farms." *Spring Hill, L.P.*, 2003 WL 23099679, at *18 (citing *Castlewood*, 969 S.W.2d at 910 (quoting *Snow*, 527 S.W.2d at 66)). *Spring Hill* did not go further in its discussion and therefore did not reach the portion of *Snow* concerning the intentional discrimination "in favor of the real property owner who *rents one* ***or more*** *single-family residences*." *Snow*, 527 S.W.2d at 66 (emphasis twice added). *Spring Hill* stands as an outlier both factually and in reasoning; given that it is so clearly factually distinguishable, it will not be given much weight, if any.

Legislative History—Journal and Debates of the Constitutional Convention of 1971

Next we turn to the legislative history of Article II, Section 28, to see if it provides guidance on how to properly apply the amendment and its effectuating provisions to the matter at hand.

While the goal of the applicable Committee may have been to tax income-producing rental single-family homes as industrial and commercial, the statements of the delegates indicate that the Committee's goal quickly yielded to compromise, leading to the creation of the two-or-more-rental-units language in the amendment.

That compromise led to a number of interesting, and perhaps pertinent statements by the delegates. In particular, Delegate Miller noted that "I am merely trying to get to the intent of the committee and I think I know what you are trying to arrive at, but I just cannot agree with the wording here. I feel like that if you have a single dwelling house which you rent it would come under the residential property not under the commercial." *Journal and Debates of the Constitutional Convention of 1971*, p. 551 (cleaned up). Delegate LaManna proposed to amend the resolution to read "containing one or more rental units" instead of two or more rental units. *Id*. That proposal was ultimately not adopted.

Amendment 9, proposed by Delegate Donelson, sought to clarify what constitutes residential property. The amendment was designed to defeat "build[ing] townhouses which are located on separate lots so that they would be considered a separate piece of property and would therefore be eligible for the classification of residential." *Id*., pp. 583-84. Instead, the amendment would change the resolution "to provide relief only for those persons who are living in their residences." *Id*, p. 584. Delegate Allen spoke against Amendment 9, arguing "I think if we undertake here to define residential [. . .] property [. . .] that is essentially income producing property to its owners that you are afoul to this Call that says residential property shall be assessed at twenty-five percent of its value." *Id*., p. 586. (cleaned up). Delegate Allen went on to explain that if Amendment 9 were adopted, landlords would have to tell tenants that their rental single-family home is now taxed as commercial and industrial property and that their rents would increase. *Id*. Amendment 9 was ultimately not adopted.

Legislative history, even that of a Constitutional Convention, is notoriously unreliable. "Relying on legislative history is a step to be taken cautiously." *Piper v. Chris-Craft Indus., Inc.,* 430 U.S. 1, 26 (1977); *see also BellSouth Telecommunications, Inc. v. Greer*, 972 S.W.2d 663

(Tenn. Ct. App. 1997). Legislative history is frequently (as seen above) unclear and sometimes involves little more than parsing self-serving statements as signs and portents as to what a subsequently-enacted provision may have meant. Statements of sponsors are no different and should be evaluated cautiously. 2A Norman J. Singer, *Statutes and Statutory Construction* § 48:15 (rev. 5th ed. 1992). Legislative history cannot substitute for the plain text of an enactment or undermine its plain meaning. *See D. Canale & Co. v. Celauro*, 765 S.W.2d 736, 738 (Tenn. 1989); *see also Elliott Crane Serv., Inc. v. H. G. Hill Stores, Inc.*, 840 S.W.2d 376, 379 (Tenn. Ct. App. 1992).

That said, the failure of Amendment 9 and the non-adoption of Delegate LaManna's proposal are somewhat telling. In each case, the issue that rental single-family homes could be subclassified as residential despite their income-producing nature was presented to the delegates at large—and in the case of Amendment 9, the issue regarding separately-parceled rental homes was expressly identified. Despite being made aware of the potential issue and given opportunities to prevent that outcome by explicitly ensuring that all rental single-family homes the owner does not occupy would be subclassified as commercial and industrial property, none of those proposals were ultimately adopted by the Constitutional Convention. While entitled to minimal weight, the legislative history of the Journal and Debates of the Constitutional Convention of 1971 tends to support Taxpayer's position.

Canon of Constitutional Avoidance

Lastly, the Assessor's testimony that property ownership is always in flux and that the database only extends to its home county raises an additional concern. What happens where rental properties with common ownership slip through the cracks, as the Assessor admitted does occur?

What happens when, for example, an owner owns multiple properties in different counties that cannot be identified by the Assessor's mass-appraisal system?

Equal protection considerations abound. Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution and the Fourteenth Amendment to the United States Constitution guarantee equal protection of the laws. In practice, equal protection guarantees that the similarly situated be treated alike. *See Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993). There appears to be no rational basis to classify single-family rental homes commonly owned but in different counties differently from single-family homes commonly owned within a single county—thereby evading an assessor's view. Under the current process explained in the Assessor's testimony, the Assessor does not look for all of the commonly-owned properties in other counties—meaning that even if combining commonly-owned properties for the purposes of evaluating the two-or-more-rental-unit exception is appropriate, there is no guarantee of accuracy for owners of rental single-family homes across multiple counties. The Assessor's position here, if ultimately adopted, could place the mass appraisal system on a constitutional collision course, where rental single-family homes may be subclassified unevenly due to Tennessee's decentralized system of assessment.

Enter the canon of constitutional avoidance. It is well-settled in Tennessee that "[i]n construing statutes, it is our duty to adopt a construction which will sustain a statute and avoid constitutional conflict if any reasonable construction exists that satisfies the requirements of the Constitution." *See Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 7 (Tenn. 2000) (quoting *David-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 529-30 (Tenn. 1993)); *see also Brooks v. Bd. of Prof. Resp.*, 578 S.W.3d 421, 426 (Tenn. 2019). According to the Assessor's testimony, perfection in classification is nigh impossible, and allowing a construction of the applicable statutory and constitutional provisions that results in unequal and inconsistent results could well result in interminable litigation across all of Tennessee's 95 counties. Taxpayer's position and preferred construction of the provisions at issue would preserve the mass appraisal system and avoid potential equal-protection violations. Accordingly, the canon of constitutional avoidance strongly counsels in favor of Taxpayer's approach.

Based on the above, given that the subject properties are individually-parceled, geographically-separated, not part of a planned community, not in the same subdivision, and not part of a condominium, the Assessor's position that they can be viewed as a whole to meet the two-or-more-rental-unit exception is not supported by the relevant statutes, precedents, or canons of construction. As *Spring Hill* is easily factually distinguishable and its approach is untethered to prior precedent and statute, the Assessor's reliance on it is unavailing. The subject properties should not be considered in combination and therefore do not fall under the two-or-more-rental unit exception that would compel a commercial and industrial subclassification. The subject properties should be subclassified as residential.

Conclusion

At bar, Taxpayer's position that rental single-family homes should be subclassified as residential property is supported by *Snow*, *Crown Enterprises*, and *General American Transportation Corporation*. At best, *Castlewood* and *Spring Hill* are eminently distinguishable and inapposite—at worst, *Spring Hill* is an outlier whose result is not grounded in the plain text of the applicable statutory and constitutional provisions. The decision in *Poovindran Pillay & King of Kings, Inc.* is both non-binding and lacking in analysis.

Moreover, the opinion of the Tennessee Attorney General, the canon of constitutional avoidance, and the legislative history counsel in favor of Taxpayer's position for the reasons discussed above. And most importantly, classifying separately-parceled single-family rental homes as residential best adheres to the plain text of Article II, Section 28 and its effectuating statutes.

Upon a thorough review of the testimony and evidence submitted in this matter and the applicable legal authorities and principles, it is determined that Taxpayer met the burden of proving that the subclassification applied to the subject properties should be changed from commercial to residential for tax years 2025 and 2026.

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

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **27th day of July 2026**.

ALEXANDER S. RIEGER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

IN THE MATTER OF: **APD CASE No. 53.02-253615J**
ASCEND RENTALS LLC V. SUMNER COUNTY ASSESSOR'S OFFICE

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE ADMINISTRATIVE JUDGE ON BEHALF OF THE TENNESSEE STATE BOARD OF EQUALIZATION (the State Board)**, called an Initial Order, was entered on **July 27, 2026.** The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A party files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). Your Petition should include your name, the above APD case number, and state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is **August 11, 2026**. A new 15 day period for the filing of an appeal to the State Board of Equalization (the State Board) (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing the Petition if no order is issued. Filing instructions are included at the end of this document.

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

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

3. **The State Board of Equalization may decide on its own motion to review the Initial Order:** The State Board may affirm, reverse, or modify the Initial Order. The State Board may also remand the case to the Administrative Judge for further proceedings.

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

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

NOTICE OF APPEAL PROCEDURES

STAY

In addition to the above actions, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **August 3, 2026**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court may also order a stay of the Initial Order upon appropriate terms. *See* TENN. CODE ANN. § 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

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

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

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:
Email: APD.filings@tnsos.gov
Fax: 615-741-4472

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

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

NOTICE OF APPEAL PROCEDURES

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

Email: sb.web@cot.tn.gov

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