REPRESENTATIVE FOR PETITIONER: Paul M. Jones Jr., Paul Jones Law, LLC

REPRESENTATIVES FOR RESPONDENT: Brian Cusimano, Attorney
Marilyn Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Chancellor, Media Whiteco, Petitioner, v. Lake County Assessor, Respondent.	)	Petition: 45-018-15-1-3-00028-17 45-018-16-1-3-01235-17 Parcel: 45-08-35-100-007.000-018 County: Lake Assessment Years: 2015, 2016

April 15, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (the "Board"), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Chancellor, Media, Whiteco, ("Chancellor") a wholly owned subsidiary of Lamar Advertising Company ("Lamar"), appealed the assessments of a small parcel in Hobart, Indiana that is used for a billboard. The Assessor provided an appraisal. Chancellor argues that the appraisal lacks probative value because of a number of critical errors, including that it incorrectly valued the property as "billboard land" contrary to Indiana Code § 6-1.1-4-45. Because the appraisal complied with the law, and Chancellor failed to seriously undermine its probative value, we find for the Assessor.

PROCEDURAL HISTORY

2. Chancellor appealed the subject property's assessment for the 2015 and 2016 assessment years. The Lake County Property Tax Assessment Board of Appeals ("PTABOA") valued the property at $20,000 for 2015 and $20,400 for 2016. Chancellor appealed to the Board in 2017. Almost three years later Chancellor moved to voluntarily dismiss the appeals. The Assessor opposed the dismissals, and the Board denied the motion.

3. The Board's administrative law judge, Jennifer Thuma, held a hearing on January 8-9, 2020. Neither she nor the Board inspected the subject property. David Hall, an MAI certified appraiser, and Mr. Shawn Pettit, Real Estate Manager for Lamar Advertising Company ("Lamar"), were sworn as witnesses.

4. The parties submitted the following exhibits:

Petitioner's Ex. 1:	Affidavit-Louis O'Donnell
Petitioner's Ex. 2:	Sales Disclosure Form-2300 Howard Street
Petitioner's Ex. 3:	Lake Station Builder's Permit
Petitioner's Ex. 4:	INDOT Letter-Building Permit
Petitioner's Ex. 5:	Letter from Louis O'Donnell to INDOT
Petitioner's Ex. 6:	Property Record Cards
Respondent's Ex. A:	Appraisal of Subject Property
Respondent's Ex. B:	Special Purpose Lease Profiles
Respondent's Ex. C:	Hypothetical Site Value
Respondent's Ex. D:	Documents for 2670 Frye Street Sale
Respondent's Ex. E:	Documents for 2300 Howard Street
Respondent's Ex. F:	Documentation of Cost of Permits
Respondent's Ex. G:	Demonstrative Exhibit

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

OBJECTIONS

6. Chancellor objected to the Assessor's attempt to qualify David Hall as an expert witness in valuation, planning, zoning, and permits. We find the Assessor presented ample evidence showing that Hall is qualified to give expert testimony on these subjects.

7. The Assessor objected to a question to Hall regarding what he considered when valuing the property as asked and answered. The ALJ took the objection under advisement. We overrule the objection.

8. The Assessor objected to Petitioner's Ex. 1, an affidavit, on the grounds that it was hearsay. Our procedural rules allow us to admit hearsay, provided we do not solely base our final determination on it. Thus, we overrule the objection and admit the exhibit but do not base our determination on it.

9. The Assessor also objected to several questions to Shawn Pettit regarding Petitioner's Ex. 1 on the basis that the answers called for hearsay. We overrule these objections and admit the testimony but do not base our determination on it.

10. The Assessor objected to Petitioner's Exs. 3-5 on the grounds that no foundation was laid as to their authenticity. Chancellor subsequently laid sufficient foundation. Thus, we overrule the objections and admit the exhibits.

11. The Assessor objected to the first page of Petitioner's Ex. 6 on the basis that it was hearsay. We admit the exhibit as our procedural rules allow hearsay, but we will not solely base our determination on it.

VOLUNTARY DISMISSAL

12. As discussed above, Chancellor previously moved to voluntarily dismiss these appeals. The Assessor opposed this dismissal, and the Board denied Chancellor's motion via separate order. A hearing was held in January of 2020. In May of 2020 the Indiana Tax Court issued two decisions dealing with voluntary dismissal: *CVS Corp. v. Prince,* 149 N.E.3d 323 (Ind. Tax Ct. 2020) and *CVS Corp. v. Prince,* 149 N.E.3d 328 (Ind. Tax Ct.

2020). We then asked the parties to provide additional briefing on this issue in light of these new cases.

13. In our previous order denying the voluntary dismissal we found the Assessor had incurred substantial expense sufficient to justify the denial under *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E. 2d 1189 (Ind. Tax Court 1997). We based this on the facts that the Assessor had obtained an appraisal in anticipation of litigation at the cost of $2,300 and because there had been two pre-hearing conference calls, a pre-hearing motion, as well as other communication between the parties and the Board. We now examine whether the *CVS* decisions compel us to reconsider that order.

14. The *CVS* decisions clearly require that the opposing party must provide concrete evidence of expense for the Board to deny a Motion for Voluntary Dismissal. The Assessor in those cases only alleged that he incurred substantial expense but did not provide evidence of the actual expenses incurred.

15. In these appeals, the Assessor provided evidence of the expense of obtaining an appraisal at the cost of $2,300. The Assessor incurred this expense prior to Chancellor filing its Motion and two years after it filed the appeals. Chancellor argues that obtaining an appraisal is a "routine expense", but it points to no authority that shows that a "routine expense" cannot also be substantial. After weighing the evidence, we conclude that the Assessor's expense was substantial and thus sufficient to merit the denial of the voluntary dismissal.[1]

BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessing official's decision has the burden of proving that a property's assessment is incorrect and what its correct assessment should be. *See Meridian Towers East & East v. Washington Twp. Assessor,* 805 N.E. 2d 475, 478 (Ind. Tax Ct. 2003). Ind. Code § 6-1.1-15-17.2 provides for an exception to this

[1] Chancellor also argued that the cost of the appraisal was not a substantial expense specifically for the County given its extensive resources. But we do not think it is appropriate for a finding of substantial expense to depend on the fiscal health of an individual party.

rule (1) when the assessment under appeal is an increase of more than 5% over the prior year's assessment or (2) where the assessment is above the level determined in the taxpayer's successful appeal of the prior year's assessment. If substantial improvements, zoning changes, or other uses occur in the tax year under appeal, the exception does not apply. Ind. Code §6-1.1-15-17.2 (c).

17. The assessed value for 2015 was $20,000. The prior year's assessment was $3,300. Both parties agreed that the Assessor had the burden of proof and we concur.

FINDINGS OF FACT

A. The Subject Property

18. The subject property is a .937 acre parcel located along Interstate Highway 65 in Hobart. One side of the triangular shaped parcel runs the length of the highway with approximately 581 feet of frontage to six lanes of traffic. The average annual daily traffic count in 2015 was over 100,000 vehicles per day. The only improvement on the parcel is a two-sided billboard made of wood facing the highway. *Resp't. Ex. A; Tr. at 23-27, 39-40.*

B. Hall Appraisal

19. The Assessor offered an appraisal report and testimony from David Hall, an MAI appraiser. Hall estimated the market value-in-use of the subject property as of the March 1, 2015 assessment date. He then trended that value forward for the 2016 assessment year. Hall certified that his appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Resp't. Ex. A at 1-8.*

20. Hall determined that Ind. Code § 6-1.1-4-45 required him to exclude the billboard sign itself, as well as any associated income, from his valuation. Because he determined he could not include income or the cost of improvements, he chose not to develop the cost or income approaches. Instead, he used the sales-comparison approach to value the land using three different techniques. *Resp't. Ex. A at 10; Tr at 27.*

21. Hall analyzed the general market conditions of Lake County, noting that employment remained stable for the years under appeal. He also found that the median household income was almost $2,000 higher in Lake County than in Indiana as a whole. The population decreased only slightly, hovering at almost half a million people. He also noted that the subject property is located in the Chicago Metropolitan Statistical Area and that more highways traverse the county than in almost any other part of Indiana. He also testified that there was significant demand for properties capable of supporting outdoor advertising and that zoning restrictions increased the value of properties already zoned and permitted for advertising. *Resp't. Ex. A at 19-29; Tr. at 32-36.*

22. Hall's first sales-comparison technique used sales of comparable billboard sites. He selected 4 properties that sold as fee simple interests without improvements. After the sale, each of the properties was improved with billboards. Each property featured frontage along a major highway. The sale prices ranged from $2/sq. ft to $5.62/sq. ft. Hall adjusted the sales for a number of factors including location, traffic count, and development potential. The adjusted sale prices ranged from $2.38/sq. ft. to $3.39/sq. ft. with an average of $2.71/sq. ft. He concluded to a value of $2.70/sq. ft. or a rounded value of $110,000 for the subject property under this analysis. *Resp't. Ex. A at 60-66; Transcript at 57-71.*

23. For his second technique, Hall used a linear regression analysis. He determined that traffic count was the most significant element of comparison for billboard sites. Using the four sales from the previous analysis, as well as four additional sales, Hall developed a trend line for price per square foot and traffic count. Based on this trend line, he determined the subject property's traffic count would yield a value of $2.70/sq. ft., or a rounded value of $110,000. *Resp't. Ex. A at 67-77; Tr. at 74-88.*

24. Finally, Hall analyzed the sale of an improved billboard site as a test of reasonableness. Using listings of used sign structures, as well as a cost approach, Hall estimated a value of $50,000 for the sign. He deducted this from the sale price to arrive at a value of $3.28/sq. ft., which yielded a rounded value of $130,000 for the subject property. *Resp't Ex. A at 78-87; Tr. At 89-99.*

25. Hall reconciled these three techniques, giving the most weight to the first two analyses. He ultimately settled on a value of $110,000 for the March 1, 2015 assessment date. Hall then trended this value forward to the January 1, 2016 assessment date. To develop his trending factor, Hall examined economic and demographic trends in the area, outdoor advertising trends, changes in traffic count, and the consumer price index. Based on this data he settled on a trending factor of 2.5%. It yielded a rounded value of $113,000 for the January 1, 2016 assessment date. *Resp't Ex. A at 88-92; Tr. 102-04, 180-87.*

ANALYSIS

26. Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5 (A); Ind. Code § 6-1.1-31-6 (F). True tax value does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6 (c) and (e). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "The market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property. " 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market value-in-use appraisals will often be probative. *Id. See also Kooshtard Property VI, LLC v. White River Twp. Ass'r,* 836 N.E. 2d 501, 506 N.E. 2d 501, 506 N. 6 (Ind. Tax Ct. 2005).

27. Ind. Code § 6-1.1-4-45 provides that in certain cases, the outdoor sign structure and any associated income is not included in an assessment of the land. It reads:

> (a) This section applies to assessment dates after December 31, 2014.
> (b) As used in this section, "sign site" means the land beneath an outdoor sign that accommodates the outdoor sign display structure and foundation under a lease or a grant of an easement.
> (c) An outdoor sign, and any associated lease, easement, and income, shall be disregarded for the purpose of determining an assessment of the land on which the outdoor sign is located, if
> (1) the sign site does not exceed the greater of:
> (A) one-fourth (1/4) of an acre; or

(B) if the sign site exceeds one-fourth (1/4) of an acre, the area that is reasonably necessary to facilitate display of the outdoor sign; and

(2) the subject matter of the outdoor sign relates to products, services, or activities that are sold, produced, or conducted at a location other than the land for which the assessment is being determined.

28. Chancellor primarily argues that the Hall appraisal erroneously valued the subject property as "billboard land" when instead he should have valued it as "land only." In particular, it criticized Hall for only relying on comparables that were bought and sold for billboard use. As discussed above, the statute requires that the sign structure and any associated income be disregarded. It does not require that the use of the land be disregarded. In fact, Indiana's market value-in-use standard is driven primarily by the use of the property. In his appraisal, Hall did not rely on any income, nor did he assign any value to the sign structure. For that reason, we find Hall's appraisal appropriately followed Ind. Code § 6-1.1-4-45.

29. Chancellor also argued that Hall inappropriately valued the property "to the user" as prohibited by Ind. Code § 6-1.1-31-6 (e). In support of this, it pointed to Hall's discussion of the financial strength of Lamar Advertising and its place as a market leader in outdoor advertising. But Hall did not directly rely on this information in developing his final opinion of value. Instead, he used it as background information that demonstrated the market demand for these properties. Thus, we do not find Hall's appraisal erroneously valued the property to the user.

30. In addition, Chancellor argued that the Assessor's evidence demonstrated that adopting the values in the Hall appraisal would result in an inequitable and unconstitutional assessment because the comparison properties Hall used were all assessed significantly lower than his opinion of value. Uniformity and equality in assessment may be measured through an assessment ratio study. *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such a study "compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable

data, such as sales prices or market value-in-use appraisals." *Thorsness,* 3 N.E.2d at 51 (citation omitted). Where a ratio study shows an actionable lack of uniformity, a taxpayer may be entitled to an equalization adjustment bringing its assessment to the common level shown by the study. In providing guidance about how to compile and evaluate the data necessary for a ratio study, the DLGF has incorporated into law the International Association of Assessing Officers' ("IAAO") Standard on Ratio Studies (July 2007). *See* 50 IAC 27-1-4; *see also*, *Thorsness*, 3 N.E.2d at 53-54 (citing to predecessor to 50 IAC 27-1-4).

31. In *Thorsness*, the taxpayer offered evidence showing that while his property was assessed at 99.9% of its sales price, six other properties in his subdivision were assessed at an average of 79.5% of their recent sales prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer's claim on grounds that it neither conformed to professionally accepted standards, nor was based on a statistically reliable sample of properties. *Id.* Although the Tax Court recognized that the taxpayer's evidence was relevant, it affirmed our conclusion that the evidence lacked probative value to show his assessment exceeded the common level of assessment for the township. *Id.* at 54.

32. Here, Chancellor contends that the assessments of Hall's comparables demonstrate that adopting the Assessor's requested values would result in an unconstitutional assessment. But this reasoning is flawed because the standards for developing a ratio study and an appraisal are very different. In an appraisal, the appraiser may exercise judgment to determine only a limited number of comparison properties are necessary to support an opinion of value. This judgment by the appraiser does not mean that the comparison properties compose a statistically reliable sample sufficient for a ratio study. Without such a showing, there are no grounds for a claim of lack of uniformity and equality or an equalization adjustment.

33. We now turn to the evidence presented. Chancellor did not provide its own appraisal, instead relying primarily on attacking the Hall appraisal. But it did provide some

evidence in the form of testimony from Lamar's Real Estate Manager, Shawn Pettit. Mr. Pettit testified that in his opinion the subject property had no value. While Mr. Pettit demonstrated that he has ample experience in the outdoor advertising business, he is not an appraiser, nor does he have any appraisal experience. Thus, we give his opinion minimal weight.

34. Chancellor also offered some specific criticisms of the Hall appraisal that we now consider. First, Chancellor argued that one of Hall's comparables should be wholly disregarded. In support of this, it offered an affidavit from a prior owner stating that of the total purchase price of $150,000, only $5,000 was for the land while $145,000 was for permits and licenses. In response, the Assessor submitted an unsigned sales disclosure form showing that the land sold for $150,000 exclusive of the permits and licenses. While we find this raises some questions about the sale, we do not find it sufficient to entirely undermine the evidence. In particular, we note that affidavit represents the opinion of only one side of the transaction, and that party's personal knowledge of the motivations of the buyer.

35. Chancellor criticized a number of Hall's other comparables on the grounds that they were not appropriately adjusted. But Chancellor did little to support these criticisms. For instance, Chancellor argued that Hall should have adjusted the comparables in the linear regression analysis for market conditions, but Hall explained that he found that market conditions were reflected in traffic count, the very variable he was trying to isolate, so no such adjustments were necessary. Similarly, Chancellor criticized Hall for not adjusting certain comparables for factors such as size, location, zoning, and development potential. But Chancellor did not present any reliable evidence showing why such adjustments are necessary. Under these circumstances we find Hall's expert opinion on whether such adjustments were necessary more persuasive. Chancellor offered some testimony from Pettit about his opinion on what would have been more appropriate comparables for Hall to use. But we find Hall, an MAI appraiser, more credible on this issue. Chancellor made a number of valid criticisms of Hall's third valuation analysis, but as he used this

analysis only as a test of reasonableness, we do not find that these criticisms undercut Hall's final opinion of value.

CONCLUSION

36. The Assessor provided a USPAP-compliant appraisal, supported by testimony from an MAI certified appraiser. Chancellor made some criticisms of the appraisal, but ultimately failed to show that it lacked probative value. Thus, we find the assessments must be changed to reflect the values of the Hall Appraisal: $110,000 for 2015 and $113,000 for 2016.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.