

REPRESENTATIVE FOR THE PETITIONER: Ayn Engle, Attorney

REPRESENTATIVE FOR THE RESPONDENT: John Reed, Abrahamson, Reed & Bilse

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lake County Assessor,	)	Petition No.:	45-034-17-1-4-01256-19
)		
Petitioner,	)	Parcel No.:	45-10-24-182-021.000-034
)		
v.	)	County:	Lake
)		
Lucky Shop Inc.,	)	Township:	St. John
)		
Respondent.	)	Assessment Year:	2017

March 10, 2023

FINAL DETERMINATION

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

INTRODUCTION

1. The Lake County Assessor filed an appeal seeking to increase the assessment of the subject property. The Assessor offered an appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) that provides a reliable, market-based opinion of the subject property’s market value-in-use. Lucky Shop failed to offer any probative evidence of the market value-in-use of the subject

property as of the assessment date. Thus, we find for the Assessor and order the 2017 assessment increased to \$2,200,000 to reflect the value from the appraisal.

PROCEDURAL HISTORY

2. Lucky Shop appealed the 2017 assessment of its property located at 3325 Hart Street in Dyer. On December 12, 2019, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination lowering the assessment from \$2,763,100 to \$1,600,000 (\$800,000 for land and \$800,000 for improvements.) The Assessor disagreed with the PTABOA’s determination and appealed to the Board on December 19, 2019.
3. On September 14, 2022, Dalene McMillen, the Board’s Administrative Law Judge (ALJ), held a hearing in Crown Point, Indiana. Neither the Board nor the ALJ inspected the property.
4. Robert Metz, hearing officer for the Lake County Assessor’s office and Randall Raynor, appraiser with American Valuation Appraisal Service, testified under oath.
5. The Assessor offered the following exhibits:
 - Petitioner Exhibit P1: Appraisal report prepared by Randall Raynor, American Valuation Appraisal Services, Inc.,
 - Petitioner Exhibit P2: 2017 subject property record card,
 - Petitioner Exhibit P3: Subject property’s sales disclosure form,
 - Petitioner Exhibit P4: Notice of Assessment / Change by an Assessing Official – Form 113 / PP for January 1, 2016, January 1, 2017, and January 1, 2018, and Business Tangible Personal Property Return – Form 103-Short for January 1, 2020, and January 1, 2021 (**Confidential**),¹
 - Petitioner Exhibit P5: Five pages from The Appraisal of Real Estate (fifteenth edition) by the Appraisal Institute,
 - Petitioner Exhibit P6: Two Google maps for 1545 U.S. 30 in Schererville,
 - Petitioner Exhibit P7: Two Google maps for 1419 Joliet Street in Dyer,

¹ The Form 103 – Short contains confidential information pursuant to Ind. Code § 6-1.1-35-9.

Petitioner Exhibit P13: Property record cards for 10444 Calumet Avenue in Munster, 747 Ridge Road in Munster, and 1750 – 45th Street in Munster.²

6. Lucky Shop offered the following exhibits:

Respondent Exhibit 1: Appraisal report prepared by Robert Del Percio and Salvatore A. Louise of Standard Valuation Services,

Respondent Exhibit 3: Comparable analysis between the subject and 250 Sheffield Avenue in Dyer,

Respondent Exhibit 4: Taxpayer's comparable analysis.³

7. The record also includes the following: (1) all pleadings, briefs⁴, and documents filed in this appeal, (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

Objections

8. Lucky Shop made several objections to questions from the Assessor that the ALJ took under advisement where the Assessor's counsel subsequently rephrased the question or did not repeat it. We find those objections are moot.

9. Lucky Shop objected to some questions to Raynor on the grounds that they called for reading every page of the appraisal. The Assessor responded that the appraiser was here to offer testimony explaining his appraisal. The ALJ took the objection under advisement. Lucky Shop offered no authority for its objection, and we find the testimony was relevant and not prejudicial. Thus, we overrule the objection and admit the testimony.

10. Lucky Shop also objected to some questions the Assessor asked Raynor regarding the intended users of the appraisal report. The ALJ took the objection under advisement.

² The Assessor submitted but did not offer into the record Petitioner Exhibits P8, P9, P10, P11, P12, P14, P15, P16, P17, P18, P19 and P20.

³ Reed submitted Respondent Exhibit 2 but did not enter it into the record.

⁴ Only the Assessor submitted a post-hearing brief.

We find this testimony meets the minimum standard for relevance and overrule the objection.

11. Lucky Shop objected to Petitioner Exhibit P3, the sales disclosure form for the subject property, on the grounds that no foundation was laid as to who prepared the document. The Assessor responded that it was a public record. We find the Assessor laid sufficient foundation as to the exhibit's authenticity. Thus, we overrule the objection and admit the exhibit.
12. The Assessor objected to the admission of Respondent Exhibit 1, the Standard Valuation Services appraisal report, on the grounds that it was hearsay. Because Ind. Code § 6-1.1-15-4 provides a specific exception to the hearsay rule for appraisal reports, we overrule the objection and admit the exhibit.
13. The Assessor objected to Respondent Exhibits 3 and 4, two comparable analyses prepared by Reed, on the grounds of hearsay. She also objected to Reed acting as both a witness and attorney. When asked whether he was acting as a witness or counsel, Reed responded, "...I guess I'm acting a little bit of both if you want the truth." Rule 3.7 of the Indiana Rules of Professional Conduct prohibits a lawyer from acting both as an attorney and a witness in a trial except under very specific circumstances. While our administrative hearings are not trials, the same principals apply. In addition, Reed did not swear in as a witness. For these reasons, we sustain the objection to any testimony from Reed. As to the exhibits, we note that Lucky Shop neither disputed the documents were hearsay nor argued that they fall within a recognized exception to the hearsay rule. Our procedural rules specifically allow us to admit hearsay evidence with some restrictions, but it does not require us to do so. 52 IAC 4-6-9 (d). Under these circumstances we find the that the same grounds that exclude Reed's testimony should exclude the exhibits, and we sustain the objections.

14. The Assessor made several objections to Reed's cross-examination of Raynor, arguing that it was beyond the scope of direct examination. The ALJ took the objections under advisement. We find the questions were not beyond the scope of direct examination and overrule the objections.

FINDINGS OF FACT

I. Subject Property

15. The subject property consists of convenience store/gas station with a carwash on 1.52 acres located at 3325 Hart Street in Dyer, Indiana. Lucky Shop purchased the property on February 24, 2016, for \$2,900,000. That purchase included personal property, but did not include the value of the business. *Pet'r Exs. 2 & 3; Respt' Ex. 1 at 6.*

II. Raynor Appraisal

16. The Assessor engaged Randall Raynor of American Valuation Appraisal Services to appraise the fee simple interest of the subject property as of January 1, 2017. He holds SRA and MAI designations and is an Indiana and Illinois licensed general appraiser with 35 years of experience appraising a variety of property types. He certified that he performed his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Raynor testimony; Pet'r Ex. 1 at 68 & 79-81.*

A. Research and Market Overview

17. Raynor found the subject property was in a good location in a growing market in Lake County. He noted the subject property is on a high traffic corner in close proximity to the border with Illinois, which draws Illinois residents to purchase gas due to the lower price per gallon. He listed various positive factors affecting the local market, such as good school districts, decent housing, increasing population, and access to Chicago's excellent transportation system. He also explained the retail marketplace profile and his drive time

map, which outlines nearby competitors that compete with the subject property. *Raynor testimony; Pet'r Ex. 1 at 14-22, 24 & 26.*

18. Raynor described the subject property as a masonry frame construction on a concrete slab with casement windows and a flat rubber roof. He noted that it was constructed in 2001 and had an effective age of 12 years. It is 4,221 square feet with 600 square feet allocated to a quick service restaurant ("QSR"). There is a 3,823 square foot canopy with 9 dual sided stations. There is also a 1,200 square foot carwash on the property. The property is zoned B-2 general business. *Raynor testimony; Pet'r Ex. 1 at 28-31 & 33.*

B. Cost Approach

19. For his cost approach, Raynor began by valuing the land using sales of seven sites located in Munster, Schererville, and Dyer. He adjusted the comparables for factors such as location, size, topography, shape, available utilities, zoning, and market conditions. The comparable properties sold between February 22, 2012, and June 14, 2016, with sale prices ranging from \$300,000 to \$1,150,000 or \$301,887 per acre to \$821,429 per acre. Two of the comparables had buildings that were demolished, and he adjusted those sales upward for the demolition costs. He reconciled these sales to a land value of \$525,000 per acre for a total value of \$800,000 for the subject land. *Raynor testimony; Pet'r Ex. 1 at 37-46.*
20. Raynor estimated the cost new of the improvements from Marshall & Swift and Performa. He calculated the cost of the convenience store, QSR, canopy and carwash. He also calculated the site improvement cost of the concrete paving, asphalt paving, light poles, signs, and landscaping. He applied \$25,000 for permits and legal costs, \$15,000 for marketing and leasing commissions and used 15% of construction cost to account for developer's profit, which he based on his knowledge of the construction of other similar properties. He arrived at a total cost prior to depreciation of \$1,938,451. He calculated physical depreciation of \$535,420 using the age-life method. He also determined the

subject property had no functional or external obsolescence. After applying the depreciation to his total costs, he arrived at a value of \$2,200,000 for the subject property. *Raynor testimony; Pet'r Exs. 1 at 47- 49.*

21. Raynor also calculated the depreciated cost of the furniture, fixtures and equipment using Marshall & Swift and new construction information from other appraisals he performed on convenience stores with gas stations. He concluded to a value of \$500,000 for the personal property. *Raynor testimony; Pet'r Ex. 1 at 48.*

B. Sales-Comparison Approach

22. For his sales-comparison approach, Raynor selected seven comparable properties using CoStar, local brokers, and his own data base. The comparables sold from May 19, 2014, to December 29, 2016, for prices ranging from \$250,000 to \$4,250,000 or \$531.41/sq. ft. to \$1,323/sq. ft. *Raynor testimony; Pet'r Ex. 1 at 50.*
23. Raynor adjusted the seven comparable properties for factors such as location, land size, traffic count, gross building area, year built, QSR, fuel positions, carwash, and non-realty items. After adjustment, the sales ranged from \$579.30/sq. ft. to \$1,382.41/sq. ft. with an average of \$879.43/sq. ft. and a median of \$786.45/sq. ft. Raynor reconciled to a value of \$750/sq. ft. Using this, he arrived at a value of \$2,715,000 for subject property. Because this value included furniture, fixtures, and equipment, Raynor extracted the \$500,000 estimate for personal property from his cost approach to arrive at a value of \$2,215,000 for just the real property. *Raynor testimony; Pet'r Ex. 1 at 50-60.*

C. Income Approach

24. Rayner began his analysis under the income approach by selecting eight lease comparables of convenience stores with gas stations. These ranged from \$36.00/sq. ft. to \$66.36/sq. ft. with an average of \$50.41/sq. ft. He concluded to a market rent of \$50/sq. ft. for the convenience store/gas station. He also estimated income for the QSR at

\$85,800. This resulted in a total gross income, less \$8,764 for expense reimbursements for insurance and common area maintenance, of \$275,114. He estimated vacancy and collection loss at 5%, which resulted in an effective gross income of \$261,358. *Raynor testimony; Pet'r Ex. 1 at 62 & 66.*

25. Next, Raynor calculated expenses excluding real estate taxes. These included insurance, common area maintenance, utilities, and management for a total of \$30,791. He subtracted the expenses from the effective gross income to arrive at a net operating income ("NOI") of \$230,567. *Raynor testimony; Pet'r Ex. 1 at 63 & 66.*
26. To select his capitalization rate, Raynor looked to data from Price Waterhouse Coopers and RealtyRates.com. He found relevant rates ranged from 4.65% to 14.44%. He ultimately settled on a capitalization rate of 7%. He added in the local tax rate of 2.11% to arrive at a loaded capitalization rate of 9.11%. *Raynor testimony; Pet'r Ex. 1 at 64-65.*
27. Raynor applied his 9.11% capitalization rate to the NOI of \$230,567 to arrive at a value of \$2,530,000 (rounded) for the real estate and personal property. He subtracted the \$500,000 for personal property he calculated in the cost approach to arrive at a value under the income approach of \$2,030,000 for the real property. *Raynor testimony; Pet'r Ex. 1 at 66.*

C. Reconciliation

28. Raynor found the sales-comparison approach best relates to the market behavior for this property type, so he gave that approach the greatest weight. He found it was supported by the cost approach, from which he estimated the value of the non-realty components. He gave the least weight to the income approach. He ultimately arrived at a value of \$2,200,000 for the subject property as of January 1, 2017. *Raynor testimony; Pet'r Ex. 1 at 67.*

III. Standard Valuation Services Appraisal

29. Lucky Shop presented an appraisal report prepared by Robert Del Percio and Salvatore Louise of Standard Valuation Services. They estimated the leased fee market value of the going concern of the subject property as of December 15, 2015. Using all three approaches to value, they concluded to a total value of \$2,875,000. They also estimated the value of the furnitures, fixtures, and equipment at \$495,000. *Resp't Ex. 1.*

ANALYSIS

30. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Assessor*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
31. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2).⁵ The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
32. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.

⁵ The Department of Local Government of Finance adopted a new assessment manual for assessments from 2021 forward. 52 IAC 2.4-1-2.

33. The Assessor asks the Board to raise the assessment to \$2,400,000 based on the February 24, 2016 purchase price, less \$500,000 for personal property. In the alternative, the Assessor requests we adopt the value from the Raynor appraisal of \$2,200,000. A purchase price can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, we cannot rely on the purchase price alone as the personal property must be removed. There is scant evidence of exactly what personal property was included in the sale, though both the Standard Valuation Services appraisal and the Raynor appraisal have very similar estimates for personal property. We also note that the sale occurred over nine months before the valuation date, which somewhat detracts from its probative value. Accordingly, the calculation of value remains somewhat speculative.
34. In contrast, Raynor estimated the value of the subject property as of the valuation date at issue. He certified that his appraisal complied with USPAP. Using the cost, sales-comparison, and income approaches, Raynor estimated the fee simple value of the subject property at \$2,200,000 as of January 1, 2017. Lucky Shop chose not to make a closing statement, nor did it file a post-hearing brief. We will not make arguments for a party, thus, Raynor's appraisal is largely un rebutted. Lucky Shop did make some points during cross-examination, the most significant of which concerned whether the comparables in Raynor's sales-comparison approach included goodwill or personal property. We are convinced that Raynor adequately extracted personal property from his valuation. As to goodwill, while Raynor admitted that he did not know for certain whether the sales contained goodwill, Lucky Shop pointed to no evidence suggesting they did. For these reasons, we find little merit to Lucky Shop's criticisms and we find the Raynor appraisal persuasive evidence of the subject property's market value-in-use.
35. We now turn to whether Lucky Shop presented reliable evidence supporting a different value. Lucky Shop did offer a USPAP compliant appraisal prepared by Standard Valuation Services. But that appraisal was for the leased fee market value of the going concern of the subject property as of December 15, 2015. Lucky Shop failed to show

how this value relates to the market value-in-use as of January 1, 2017, nor did it show how the leased fee market value of the going concern related to the subject property's market value-in-use. For these reasons, we find the appraisal lacks probative value.

36. Thus, we find the Raynor appraisal is the most persuasive evidence in the record for the market value-in-use of the subject property as of the valuation date. Accordingly, we order the 2017 assessment changed to \$2,200,000.

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>.