REPRESENTATIVE FOR PETITIONER: Dale Armbruster, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT: Brian A. Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Kappa Investments LLC,	)	Petition:	73-002-11-1-4-82434-15
	)		73-002-12-1-4-20513-15
Petitioner,	)		73-002-13-1-4-20507-15
	)		
v.	)	Parcel:	73-07-29-100-011.000-002
	)		
Shelby County Assessor,	)	County:	Shelby
	)		
Respondent.	)	Assessment Years: 2011, 2012, and 2013	

Appeals from the Final Determinations of the
Shelby County Property Tax Assessment Board of Appeals

October 2, 2018

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. Kappa Investments LLC ("Kappa") argued that the subject property's assessments should be $2,600,000 based on an "equitable assessment review" prepared by its tax representative, Dale Armbruster. We find this evidence is unreliable and that it was not prepared using generally accepted appraisal principles. The Assessor admitted the subject property was over assessed based on an appraisal prepared by David Hall, MAI. Thus, we order the assessment reduced to the values from the Hall appraisal.

PROCEDURAL HISTORY

2. Kappa timely filed notices for review with the Shelby County Property Tax Assessment Board of Appeals ("PTABOA") for the 2011-2013 assessment years. The PTABOA issued determinations valuing the property as follows:

Year	Land	Improvements	Total
2011	$ 498,000	$ 4,102,000	$ 4,600,000
2012	$ 498,000	$ 4,102,000	$ 4,600,000
2013	$ 498,000	$ 4,102,000	$ 4,600,000

3. Kappa then timely filed Form 131 petitions with the Board. On April 5, 2018, our designated Administrative Law Judge ("ALJ"), Timothy Schuster, held a hearing. Neither he nor the Board inspected the subject property.

4. Brian A. Cusimano represented the Assessor. Dale Armbruster represented Kappa and testified under oath. David Hall, the Assessor's appraiser, also testified under oath.

5. The following exhibits were submitted:

Petitioner's Ex. 1:	An email dated 9-17-13 from Bradley A. Berkemeier to Amarjeet Luthra,
Petitioner's Ex. 2:	An email dated 2-26-14 from Bradley A. Berkemeier to Amarjeet Luthra,
Petitioner's Ex. 3:	An email dated 2-27-14 from Jeff Wuensch to Amarjeet Luthra,
Petitioner's Ex. 4:	An assessment review sheet created by Dale Armbruster.
Respondent's Ex. A:	Appraisal report prepared by David Hall,[1]
Respondent's Ex. B:	An email dated 9-27-13 from Amarjeet Luthra to Brad Berkemeier with itemized construction costs.

[1] The Assessor asserts that the appraisal contains confidential information. She submitted a redacted version on April 12, 2018.

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) the digital recording of the hearing.

OBJECTIONS

7. The Assessor objected to the admission of Petitioner's Exs. 2 and 3, emails between employees of Kappa and representatives of the Assessor's office, on the grounds that they contained settlement discussions. Kappa argued that they were "more of a threat." Admitting evidence of settlement discussions is generally disfavored. We agree with the Assessor that the email was part of settlement discussions. Thus, we sustain the Assessor's objection and exclude Petitioner's Exs. 2 and 3 from evidence.

8. The Assessor objected to Petitioner's Ex. 4 claiming it was not properly exchanged. Armbruster noted that the document was presented at a prior hearing. Although he did not specify which prior hearing, we infer that it was at a PTABOA hearing. Therefore, under these circumstances we waive the exchange deadline under 52 Ind. Admin. Code 2-7-1(d), and admit Petitioner's Ex. 4 into evidence.

FINDINGS OF FACT

A. The Subject Property

9. Kappa acquired the subject property in 2008 and improved it with a limited-service hotel. It was operated as a Holiday Inn Express during the years at issue. It is located at 38 West Rampart Way in Shelbyville, Indiana, with a lot size of 2.49 acres. There are four competing hotel properties near the subject property. *Resp't. Ex. A at 5, 30-32*.

10. Kappa completed the construction of the hotel in June 2010. The hotel is three-stories tall with 74 guest rooms and suites covering approximately 45,183 square feet. It also has a lobby with breakfast area, indoor pool, meeting room, fitness center, business center, guest laundry, and vending areas. *Resp't. Ex. A at 4*.

B. Kappa's Arguments

11. Dale Armbruster created an "equitable assessment review," in which he compared the subject property's assessments to the assessments of two nearby hotels. He then calculated hypothetical assessments for the subject property based on the per room assessment of the other hotels. Armbruster also noted that the "goal does not appear to be equity." On cross-examination, Armbruster admitted that he made no adjustments for differences in the common areas, construction quality, or age/condition of the three properties. *Armbruster testimony; Pet'r Ex. 4*.

12. Based on this Analysis, Kappa requested an assessed value of $2.6 million for the subject property. Although it did not specify for which years, we infer that it is requesting that value for each year under appeal. *Armbruster testimony*.

C. Assessor's Arguments

13. The Assessor hired David Hall of Integra Reality Resources to appraise the retrospective market value-in-use of the fee simple interest for the subject property. He developed a full valuation for the 2013 assessment date. He then trended that value to the 2012 and 2011 assessment dates using the consumer price index. *Hall testimony*.

14. Hall is an Indiana certified general appraiser and holds MAI and AICP[2] designations. He certified that he performed his appraisal in conformity with the Uniform Standards of Appraisal Practice ("USPAP"). *Hall testimony; Resp't Ex. A at 2*.

a. Hall's Research and Market Overview

15. Hall testified that hotels like the subject property are typically sold as a "going concern," which means they are sold as a business and include personal property, intangible assets, and real property. He explained that it was typical in a hotel valuation to appraise the value of the going concern and then extract the value that is not attributable to real property via an allocation. *Hall testimony; Resp't Ex. A at 6-7*.

[2] Member of the Appraisal Institute and American Institute of Certified Planners, respectively.

16. Hall identified the local market as Shelby County, which is part of the Indianapolis-Carmel, IN Metropolitan Statistical Area. Hall noted that the subject property benefits from its good access to I-74 and has average exposure to the interstate. He also looked at other hotel properties in the immediate area. He found that the subject property was superior to all of its immediate competitors because of its age/condition, amenities, and location appeal. *Hall testimony; Resp't Ex. A at 24-56*.

b. Hall's Valuation Approaches

17. Hall developed all three approaches to value, but gave the most weight to his sales-comparison and income capitalization approaches. Hall valued the subject property as of March 1, 2013. He then trended that value back using the consumer price index to reach value conclusions for the March 1, 2011 and March 1, 2012 valuation dates. *Hall testimony.*

i. Hall's Cost Approach

18. Hall began his cost approach by developing a land valuation. He chose five comparable sales from the Shelbyville area. The properties ranged from 1.01 to 2.28 acres and sold for between $58,424 and $327,381 per acre. He then performed a qualitative adjustment analysis in which he rated the sales for factors such as market conditions, location, access/exposure, size, and physical characteristics. Based on this analysis, he settled on a reconciled land value of $135,000/acre or $340,000 total. *Hall testimony; Resp't Ex. A at 69-78.*

19. Hall looked to five sources to estimate the replacement cost of the improvements. These were:

- Historic costs from the subject property.
- Marshall Valuation Service Calculator Method.
- Marshall Valuation Service Per Room Method.

- Hilton Worldwide Development Costs and Building Prototype Data.
- HVS Hotel Development Cost Survey.

He then reconciled the values for each of these five indicators, applied depreciation, and arrived at a depreciated replacement cost of $4,310,000. After adding in his land value, he arrived at an indicated value of $4,650,000 under the cost approach. Hall noted that this value included personal property but excluded intangible assets and business value. *Hall testimony; Resp't Ex. A at 79-95*.

ii. Hall's Sales-Comparison Approach

20. Hall developed two sales comparison analyses, a price per room analysis and a room revenue multiplier analysis. *Hall testimony.*

21. For the price per room analysis, Hall selected six comparable hotel properties from across Indiana. He then derived the sale price per room for each comparable based on the sale price and number of rooms. This resulted in a range from $42,478 to $84,257 per room. Hall made adjustments for market conditions, location, size, age/condition, and economic characteristics. Hall reconciled these adjusted sales to arrive at a value of $62,000 per room or $4,590,000 for the value of the going concern of the subject property. *Hall testimony; Resp't Ex. A at 96-108.*

22. For his room revenue multiplier analysis, Hall derived a "room revenue multiplier" from 10 sales of hotel properties. He applied that multiplier to the subject property's projected revenue per room from his income approach to arrive at a value of $4,920,000 for the going concern. *Hall testimony; Resp't Ex. A at 108-10.*

23. Hall reconciled these two analyses, giving them both equal weight, to arrive at a value of $4,750,000 under the sales comparison approach. This value included real estate, personal property, intangible assets, and business value. *Hall testimony; Resp't Ex. A at 110.*

iii. Income Capitalization Approach

24. Hall developed an income capitalization approach using the direct capitalization method. As part of this approach, Hall developed an income projection for the room revenue using the 2013 PKF and Smith Travel Research. He also looked at historic data from the subject property but did not give it significant weight. Hall then used the same data to develop expense estimates. After applying the expenses to the estimated revenue he arrived at a net operating income ("NOI") of $412,577 for the subject property. *Hall testimony; Resp't Ex. A at 111-20*.

25. Next, Hall developed a capitalization rate using comparable sales, investor surveys, and the band of investment method. He reconciled this data to arrive at a loaded capitalization rate of 11.2%. Hall applied this rate to his NOI to arrive at a value of $4,930,000 under the income approach for the going concern. *Hall testimony; Resp't Ex. A at 123-26*.

c. Hall's Reconciliation

26. Hall reconciled his three approaches to value giving the greatest weight to the sales comparison and income approaches because they valued the entire going concern. He settled on a retrospective value of $4,850,000 as of March 1, 2013. He then trended the value backwards using the consumer price index to arrive at trended values for the 2011 and 2012 valuation dates. *Hall testimony; Resp't Ex. A at 127-29.*

27. To arrive at a value for just the real property, Hall allocated values for the personal property, intangible assets, and business value. He then deducted those to arrive at a value for the real property. *Hall testimony; Resp't Ex. A at 137*.

28. To estimate the personal property, Hall looked at depreciated cost schedules as well as allocations from comparable sales. After considering this data, he settled on a value of $5000/room or $370,000 total for personal property. *Hall testimony; Resp't Ex. A at 137-41*.

29. Hall estimated intangible assets and business value primarily by subtracting his conclusion from the cost approach (which he found did not contain any intangible assets or business value) from his reconciliation for the going concern. After performing this analysis, he determined there was $200,000 of intangible assets and business value. Hall also made a second estimate of intangible assets and business value as a test of reasonableness. Based on his research, he found that approximately 15% of the subject's revenue was likely due to its affiliation with a successful hotel chain. He then capitalized that 15% of the NOI, which yielded an estimate of intangible assets and business value of $210,000. He did not give great weight to this conclusion, but found it supported his first estimate. *Hall testimony; Resp't Ex. A at 141-43.*

30. Hall settled on the following conclusions for the market value-in-use of the subject property after deducting the personal property, intangible assets, and business value as well as trending his conclusion to the 2011 and 2012 assessment dates.

Year	**Value**
2011	$4,108,890
2012	$4,217,834
2013	$4,280,000

BURDEN OF PROOF

31. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-

17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). The Assessor argued that the burden of proof should not shift because improvements were constructed between the 2010 and 2011 assessments. Kappa conceded that the burden of proof should not shift. Consequently, the burden of proof remains with Kappa.

ANALYSIS

32. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value 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 at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

33. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See 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 2011, 2012, and 2013 assessments, the valuation dates were March 1, 2011, March 1, 2012, and March 1, 2013, respectively. I.C. § 6-1.1-4-4.5(f).

34. Kappa had the burden of proof. It primarily relied on Armbruster's assessment comparison analysis. Ind. Code § 6-1.1-15-18 allows a taxpayer to introduce evidence of the assessments of any relevant comparable property. I.C. § 6-1.1-15-18(c)(2). But, the determination of whether properties are comparable must be made using generally accepted appraisal and assessment techniques. *Id.* While the properties Armbruster presented appear to be within the general proximity of the subject property, Kappa did not provide any evidence showing that either hotel was comparable to the subject property. Armbruster also admitted that he did not make any adjustments to account for the differences between the purportedly comparable properties and the subject. We find that he failed to use generally accepted appraisal and assessment techniques for purposes of I.C. § 6-1.1-15-18.

35. Furthermore, Armbruster did not show how any of his opinions related to any of the relevant valuation dates. Indeed, we had to infer that Kappa was asking us to adopt Armbruster's valuation for each assessment date under appeal because his evidence was not specifically related to any assessment date.

36. We note that while Kappa did not cite to any authority, it also appears to be challenging the assessments based on a purported lack of uniformity and equality. According to the Tax Court, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001).

37. Kappa did not provide objectively verifiable market data either for the subject property, or for the other properties it claims are receiving disproportionate assessments. Nor did it

show that two properties constitute a statistically reliable sample. We find that Kappa failed to show the subject property is not receiving a uniform and equal rate of assessment.

38. Overall, Kappa failed to make a prima facie case for any reduction in value. The Assessor asked the Board to adopt the values from Hall's appraisal, which are lower than the current assessments. While Kappa made some criticisms of Hall's appraisal, it did not provide any compelling evidence that the appraisal supported a different value than Hall's conclusions. Thus, based on the Assessor's admission that the subject property is over assessed, we order the assessments reduced to the values from Hall's appraisal.

CONCLUSION

39. Kappa failed to make a prima facie case for any reductions in the assessments. The Assessor conceded to the lower values in the Hall appraisal. Therefore, the assessments are changed to the following values:

Year	Value
2011	$4,108,900
2012	$4,217,800
2013	$4,280,000

This 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>.