

STATE OF MINNESOTA
COUNTY OF WASHINGTON

TAX COURT
TENTH JUDICIAL DISTRICT
REGULAR DIVISION

The Shoppes of Woodbury Village,
Petitioner,

**FINDINGS OF FACT
CONCLUSIONS OF LAW
ORDER FOR JUDGMENT**

vs.

File Nos. CX-07-2880
CV-08-1506
CV-08-5768

County of Washington,

Dated: November 12, 2009

Respondent.

The Honorable Kathleen H. Sanberg, Judge of the Minnesota Tax Court, heard this matter on May 5 and 6, and June 1, 2009, at the Minnesota Tax Court courtroom 210, Minnesota Judicial Center, St. Paul, Minnesota.

Larry D. Martin, Attorney at Law, L.D. Martin & Associates, Ltd., represented the Petitioner.

Jim Zuleger, Assistant Washington County Attorney, represented the Respondent.

Both parties submitted post trial briefs and post trial briefs on the Motion to Exclude. The matter was submitted to the Court for decision on August 24, 2009.

The Court, having heard and considered the evidence and upon all of the files, records and proceedings herein, now makes the following:

FINDINGS OF FACT

1. The Shoppes of Woodbury Village (“Petitioner”) has sufficient interest in the property to maintain the petitions; all statutory and jurisdictional requirements are complied with, and the Court has jurisdiction over the subject matter of the parties and to the action.
2. The property is a multi-tenant shopping center at 7455 Currell Boulevard, Woodbury, Minnesota¹ (“Subject Property”). It is zoned B-3, Shopping Center District. There are several shopping centers adjacent to or near the Subject Property. The Subject Property has good access with frontage on Valley Creek Road and Bielenberg Drive. The building is one story and sits on a corner lot, adjacent, on the west side, to The Old Country Buffet. It was built in 2001.
3. The Subject Property contains 15 retail tenant units with a gross building area of 23,875 square feet and net rentable area of 21,836 square feet. The site size is 2.79 acres and is rectangular in shape. The land to building ratio is 5.09 to 1.
4. The construction is good Class C construction with a remaining life of 55 years for assessment year 2006, 54 years for assessment year 2007, and 53 years for assessment year 2008. The structural frame is heavy steel with a steel truss flat roof. The average story height is 18 feet.
5. The Highest and Best Use as improved is for a multi-tenant retail center.
6. There is a petroleum pipeline easement along the west side parking lot running north/south through the Subject Property and located on the

¹ PID No. 08-028-21-31-0017.

borderline with the adjacent property. The easement totals 60 feet in width and covers 30 feet on the Subject Property. There are two pipes, 16 inches in diameter, running through this easement; the exact location is undetermined.²

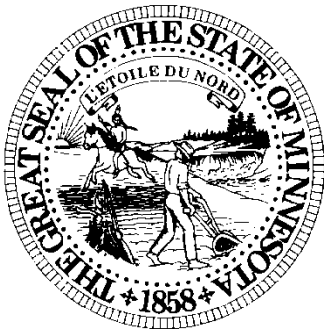
7. The Washington County Assessor placed a January 2, 2006, estimated market value on the Subject Property of \$4,790,400.
8. The Washington County Assessor placed a January 2, 2007, and a January 2, 2008, estimated market value on the Subject Property of \$4,870,300.
9. Petitioner's appraiser, Daniel T. Boris, MAI, CCIM, SRA, opined that the January 2, 2006, value of the Subject Property at \$3,370,000; the January 2, 2007, value at \$3,450,000; and the January 2, 2008, value at \$3,465,000.
10. Washington County submitted an appraisal report completed by Robin Nelson, Washington County Commercial Assessor, in which the value of the Subject Property for all assessment years was determined to be \$5,000,000. Robin Nelson is a licensed assessor in Minnesota, but she is not a licensed appraiser. Her duties as an assessor do not include appraising the Subject Property for Tax Court as the assessment had already been done.

² The exact location of the two pipes running through the easement is not known as the refining company would not release the information for security reasons.

CONCLUSIONS OF LAW

1. The Washington County Assessor's estimated market value for the Subject Property as of January 2, 2006, is affirmed.
2. The Washington County Assessor's estimated market value for the Subject Property as of January 2, 2007, is affirmed.
3. The Washington County Assessor's estimated market value for the Subject Property as of January 2, 2008, is affirmed.

BY THE COURT,



Kathleen H. Sanberg, Judge
MINNESOTA TAX COURT

DATED: November 12, 2009

Memorandum

Background

The property at issue is a shopping center at 7455 Currell Boulevard, Woodbury, Minnesota ("Subject Property"). It is a multi-tenant retail building containing 15 retail tenant units with a gross building area of 23,875 square feet and net rentable area of 21,836 square feet. The building is one story and sits on a corner lot. It was built in 2001. The site size is 2.79 acres and is rectangular

in shape. The Subject Property has good access with frontage on Valley Creek Road and Bielenberg Drive. The land to building ratio is 5.09 to 1. The Subject Property is zoned B-3, Shopping Center District. There are other retail centers and stores nearby.

The construction is good Class C construction with a remaining life of 55 years for assessment year 2006, 54 years for assessment year 2007, and 53 years for assessment year 2008. The structural frame is heavy steel with a steel truss flat roof. The average story height is 18 feet.

There is a petroleum pipeline easement along the west side parking lot running north/south. The easement, totaling 60 feet in width, covers 30 feet on the Subject Property and is located on the borderline with the adjacent property. There are two 16 inch diameter pipes running through the easement. The exact location of the two pipes running through the easement is not known as the refining company would not release the information for security reasons.

The Shoppes of Woodbury Village ("Petitioner") filed its property tax appeals for the assessment dates January 2, 2006, January 2, 2007 and January 2, 2008. The Washington County ("Respondent") Assessor placed a January 2, 2006, estimated market value on the Subject Property of \$4,790,400. The Washington County Assessor placed a January 2, 2007, and January 2, 2008, estimated market value on the Subject Property of \$4,870,300.

Petitioner's appraiser, Daniel T. Boris, MAI, CCIM, SRA, opined that the January 2, 2006, value of the Subject Property was \$3,370,000; the January 2, 2007, value was \$3,450,000; and the January 2, 2008, value was \$3,465,000.

As will be more fully explained below, the Court did not deem Respondent's appraiser, Ms. Robin Nelson, Washington County Commercial Assessor, an appraisal expert and her report was not admitted into evidence. She did not testify any further after the Court sustained Petitioner's objection to the report. Thus, the only testimony before us is that of Petitioner's appraiser, Mr. Boris.

Burden of Proof

The assessor's estimated market value is *prima facie* valid.³ The petitioner may overcome the presumption by introducing credible evidence that the assessor's value is incorrect.⁴ After considering all the evidence, the Court makes a determination of value based upon the preponderance of the evidence.⁵

Here, Petitioner presented sufficient evidence, through the testimony of its appraiser, to rebut the presumption. We first turn to the highest and best use.

Highest and Best Use

Mr. Boris found that the highest and best use of the Subject Property, as of the assessment dates, as vacant and available for development, is for multi-tenant retail constructed to maximum density and consistent with the B-3 Shopping Center zoning code. The highest and best use as improved is as the existing multi-tenant retail building. We agree with Mr. Boris and find that the

³Southern Minnesota Beet Sugar Coop. v. County of Renville, 737 N.W.2d 545, 558-60 (Minn. 2007).

⁴ Id.

⁵The Pep Boys v. County of Anoka, File Nos. C2-01-2780 et al. (Minn. Tax Ct. Oct. 26, 2004); Gregorich v. County of Anoka, File No. C6-02-4557 (Minn. Tax Ct. Oct. 8, 2003).

highest and best use for the Subject Property as improved is for a multi-tenant retail center.

Valuation Methods

This Court considers the three traditional approaches to valuation (cost, income and sales) in determining market value.⁶ The Court, however, is free to place greater or lesser emphasis on a particular method or methods of valuation.⁷ Mr. Boris considered and performed an analysis under all three approaches. We turn first to the sales approach.

Sales Comparison Approach

Similar to the cost and income approaches, the sales comparison approach presumes an informed buyer would not pay more for a property than it would cost to purchase a similar property with comparable utility.⁸ Once sales of potential comparable properties are identified, they are analyzed to determine their level of comparability to the subject property. A comparative analysis usually begins by identifying the sale and then the elements of comparison that affect property values in the subject market.⁹ Each element is analyzed to determine whether an adjustment to a comparable property sale is required to maximize its comparability to the subject property.¹⁰

⁶ See Equitable Life Assurance Soc'y v. Ramsey County, 530 N.W.2d 544, 552 (Minn. 1995).

⁷ Carson Pirie Scott & Co. (Ridgedale) v. County of Hennepin, 576 N.W.2d 445, 447 (Minn. 1998).

⁸ The Appraisal of Real Estate, 418 (12th ed. 2001).

⁹ The Appraisal of Real Estate, 429-30 (12th ed. 2001).

¹⁰ The Appraisal of Real Estate, 430 (12th ed. 2001).

Here, Mr. Boris used eight comparables in his sales approach. Six of the comparables were built within five years of the Subject Property, while two were significantly older. Due to the pipeline and easement on the Subject Property, all of the comparables were adjusted for encroachment/environmental in addition to the other adjustments described below.

Comparable No. 1 is a retail center in Cottage Grove that sold in August of 2007. It is smaller than the Subject Property, and in a lesser quality location. After adjustments for location and time since sale, Mr. Boris concluded to an adjusted gross building area ("GBA") unit price of \$143.85.

Comparable No. 2 is a retail center located in Woodbury. It also sold in August of 2007. It has a single tenant and is approximately half the size of the Subject Property. After adjustments for time, size and parking/land features, Mr. Boris concluded to an adjusted GBA unit price of \$156.53.

Comparable No. 3 is a multi-tenant retail center in Cottage Grove that sold in April of 2007. The property is considerably smaller than the Subject Property with approximately half the land size of the Subject Property. It is newer than the Subject Property. After adjusting for size, location, age, and construction, Mr. Boris concluded to a GBA unit price of \$160.07.

Comparable No. 4 is a strip mall in Woodbury. It is larger than the Subject Property with approximately 29,000 sq. ft. After adjusting for location, age, and parking/land features, he determined to a GBA unit price of \$156.00.

Comparable No. 5. is a strip mall in Woodbury. It is larger than the Subject Property and sold in November of 2006. Subsequent to the sale, this property was

split into retail condominiums. After adjusting for time and parking/land features, Mr. Boris found a GBA unit price of \$158.57.

Comparable No. 6 is a strip mall in Oakdale that is substantially smaller than the Subject Property, although it is approximately the same age. After making adjustments for location, size, and construction, Mr. Boris arrived at a GBA unit price of \$143.86.

Comparable No. 7 is a strip mall in Cottage Grove. This is an older facility with some long term below-market rents. It is substantially smaller than the Subject Property and substantially older. It is approximately 18 years old while the Subject Property is 5 years old. After adjusting for location, size, age, and construction, Mr. Boris concluded to a GBA unit price of \$144.88.

The final comparable, Comparable No. 8, is a retail shopping mall in Cottage Grove. It is approximately half the building size and half the land size of the Subject Property. After making adjustments for location, size, and age, Mr. Boris concluded to a GBA unit price of \$141.96.

Mr. Boris' value conclusion is \$150.00 per GBA unit¹¹ for the January 2, 2006, assessment date. He increased this by 3% for January 2, 2007, to \$154.40 per GBA unit. Because of lack of financial liquidity in the market in the summer of 2007, Mr. Boris lowered the value for January 2, 2008, back to the 2007 level. Thus, he arrived at the values for the Subject Property, rounded, under his sales comparison approach as follows:

¹¹ Commonly referred to as psf, "per square foot."

for	January 2, 2006	\$3,580,000;
for	January 2, 2007	\$3,690,000; and
for	January 2, 2008	\$3,580,000.

Respondent argues that Mr. Boris's sales approach analysis is flawed. First, Comparable No. 1 is only 50% improved. Next, Comparable No. 4 is a gas station site that contains mostly office units. Comparable No. 5 is a condominium site, not rental, in an inferior location. Comparable No. 6 is only partially improved and Mr. Boris did not include an April 2006 sale of this property that would be more comparable. Comparable No. 7 is 13 years older than the Subject Property and requires substantial maintenance. Finally, Comparable No. 8 is bare land.

Mr. Boris, on cross examination, acknowledged that there was a sale of Comparable No. 6 in April of 2006. This was one year later than the 2005 sale relied upon by Mr. Boris. In April of 2006 Comparable No. 6 sold for \$3,060,000 or \$211.00 psf before adjustments. This compares to \$141.03 psf for the 2005 sale. The 2006 sale price is significantly higher than the 2005 sale price.

Mr. Boris gave less weight to his Comparable Nos. 2 and 7 as they had net adjustments of over 25%. We agree, but give no weight to Comparable No. 7 as the gross adjustment was over 65%. We give no weight to Comparable No. 8 as it was bare land. We give lesser weight to Comparable Nos. 3, 6 and 8, also because of higher gross adjustments. Comparable Nos. 1, 2, 4, and 5 had lower adjustments; they were all located in Woodbury, as is the Subject Property. A problem with Comparable No. 2, however, is that it was sold for single tenant occupancy. Comparable Nos. 4 and 5 were closest in building size to the Subject

Property, but they had different uses than the Subject Property. They were also larger in building and land size. We believe that additional adjustments are indicated, especially in light of the sales price of the 2006 sale of Comparable No. 6.

Mr. Boris made an additional adjustment of 10% for the pipeline easement. The pipeline easement is a 60 foot wide easement for 2 petroleum pipelines on the border of the Subject Property; 30 feet affects the Subject Property. Mr. Boris did not know if the 2 pipes actually were on the Subject Property or on the adjacent property. The pipeline company, citing security concerns, would disclose only that the pipes were in the middle of the easement. Thus, we do not know for certain if one or both of the pipes are actually on the Subject Property. Mr. Boris adjusted his comparables 10% for the easement.

Respondent, however, argues that Mr. Boris did not prove that there is a negative impact on the value of the Subject Property. Mr. Boris did not do market research to determine the impact of the pipeline, rather he relied on discussions with coworkers and his experience in doing mortgage appraisals. Further, the easement does not prevent use of the land, as it is currently the site of 6 or 7 parking stalls. The pipeline is not underneath any building. Respondent also asserts argues that the pipeline would have no impact on further building as there is a 50 foot setback requirement. Finally, Mr. Boris presented no evidence about the pipeline's impact on value at the time the property was developed.

We agree with Respondent that there is not sufficient evidence to support Mr. Boris's finding of a 10% adjustment due to the easement. At the least, it would

need to be reduced by half; Mr. Boris's adjustment of 10% was based on his statement that the easement was 60 feet wide, but only 30 feet is on the Subject Property. While it may be an intuitive conclusion that there would be a negative impact due to the pipeline, Petitioner failed to prove that the easement negatively affected the value of the Subject Property or to prove the amount, if any, of that negative impact on value.

As stated above, Mr. Boris's comparables are very different from the Subject Property as shown by the significant net and gross adjustments and the 2006 sale of Comparable No. 6. They had different uses, were different sizes, one was a condominium, one was bare land. Further adjustments are needed. Further, Petitioner failed to prove its adjustment for the easement. For these reasons, we give no weight to Mr. Boris's sales approach and do not conclude to a value under the sales approach.

Income Approach

Under the income approach, the value of the property is determined by looking at the present worth of the future rights to income by capitalizing the anticipated market level of rent less the market level of expenses.¹² Here, Mr. Boris relied on two methods to determine a value under the income approach, the direct capitalization analysis and a discounted cash flow ("DCF") analysis.

In his direct capitalization analysis, after reviewing leases in other multi-tenant retail centers in the Twin Cities metropolitan area, Mr. Boris determined that the market net rent for tenant suites larger than 5,000 square feet was \$10.75 psf

¹² Space Center Ent., Inc. v. County of Ramsey, File Nos. C4-97-336, C4-98-3241 (Minn. Tax Ct. Nov. 4, 1999).

in 2005, \$11.30 psf in 2006, and \$12.00 psf in 2007. For tenant suites of less than 2,000 square feet, the market net rent was \$16.90 psf in 2005, \$17.75 psf in 2006, and \$18.65 psf in 2007. For tenant suites between 2,000 and 5,000 square feet, he estimated the net rent at \$13.85 psf in 2005, 14.50 psf in 2006, and 15.30 psf in 2007. For 2008, he stated that the rates were the same as in 2007. Therefore, the total potential net rent for the Subject Property was as follows:

for 2006	\$345,580;
for 2007	\$362,603; and
for 2008	\$381,486.

After determining and applying: the vacancy rate for the Subject Property at 10%, a 6.0% management fee, common area maintenance fees, insurance and taxes, plus other soft costs, Mr. Boris arrived at a net operating income (“NOI”) as follows:

for 2006	\$290,510;
for 2007	\$306,081; and
for 2008	\$305,525.

His NOI did not include a replacement reserve.

Mr. Boris performed a direct capitalization finding using a band of investment method of 9.1%, in which he included 50 basis points for the risk related to the pipeline. He found an indicated capitalization rate (“cap rate”) of 8.56% using 11 sales of properties located across the broader Twin Cities metro area. He also looked at several cap rates taken from Real Estate Research

Corporation and the Korpacz Survey. From these he finds a cap rate of 9.1%, which again included the increased risk from the petroleum pipeline.

Mr. Boris applied his cap rate to the NOI and opined to values for the Subject Property as follows under a direct capitalization approach:

for January 2, 2006	\$3,190,000;
for January 2, 2007	\$3,360,000; and
for January 2, 2008	\$3,360,000.

Mr. Boris also performed a DCF analysis. He obtained data from his company and the leases seen by his co workers to establish tenant costs and expenses. He found value estimates based on his DCF analysis as follows:

for January 2, 2006	\$3,150,000;
for January 2, 2007	\$3,150,000; and
for January 2, 2008	\$3,300,000.

Respondent argues that Mr. Boris was arbitrary in his use of 11 of the 14 existing leases, showing no evidence that these were below market. The leases he used were from properties that were very different from the Subject Property. Further, Respondent argues that Mr. Boris miscalculated the vacancy rates, for the three assessment years, as it decreased rather than increased. The cap rate, according to Respondent, is miscalculated as, according to Collier's, the cap rate was decreasing and averaged around 7.53%.

We agree that Mr. Boris's income approach is significantly flawed. All of the existing leases should have been used as there was no indication that the three excluded were below market. Mr. Boris's DCF analysis was based in part upon his

discussions with his co-workers and leases that they had seen. The vacancy rates were considerably higher than the actual vacancy rates. His market leases were not from comparable properties. In determining his cap rates, he did not use any shopping centers in Washington County. Rather, he used figures from shopping centers that were all built prior to 1990, six built prior to 1980, leading to a distorted cap rate. He did not use actual expenses. Further, the addition of 50 basis points for the pipeline is also flawed, as discussed above, and because there is no showing that the pipeline affected either income or expenses. Because an income approach is based upon actual or market rents and an appropriate cap rate, Mr. Boris's income approach is fundamentally flawed. Thus, we place no reliance on his approach.

We, therefore, arrive at no conclusion of value under the income approach.

Cost Approach

Under the cost approach to value, the market value for a subject property is determined by adding the land value to the replacement cost of the improvements, less any depreciation accruing to the improvements.¹³ The theory underlying the cost approach is that an informed buyer would pay no more for the property than the replacement cost of property with the same utility.¹⁴ We turn to the land valuation.

Land Valuation

Mr. Boris determined the value of the land using five land sales comparables. He determined a land value as follows:

¹³ Harold Chevrolet, Inc. v. County of Hennepin, 526 N.W.2d 54, 56 (Minn. 1995); The Pep Boys.

¹⁴ Southern Minnesota Beet Sugar Coop, 737 N.W.2d at 545; Am. Express Fin. Advisors, Inc. v. County of Carver, 573 N.W.2d 651, 657 (Minn. 1998).

for January 2, 2006 \$9.50 psf \$1,155,000 rounded total;
for January 2, 2007 \$9.79 psf \$1,190,000 rounded total; and
for January 2, 2008 \$9.79 psf \$1,190,000 rounded total.

Three of the land parcels were located in Woodbury. None were zoned B-3, Shopping Center, the same as the Subject Property, or had the same intended use of multi-tenant rental. Only one, Comparable No. 4, had its intended use as retail; this sold for \$9.83 psf to Sportsman's Warehouse. After adjustments for location, visibility, access and size, Mr. Boris found an adjusted price of \$10.45 for his land sales Comparable No. 4.

Again, there are problems with Mr. Boris's land valuation. Land Comparable No. 4 was the only property that was located in Woodbury and used for retail, but it was three times the size of the Subject Property. As he had testified that larger properties usually sell for less per square foot than smaller properties, his final value should have been adjusted higher.

Structure Value

After determining his land value, Mr. Boris analyzed the structure and improvements. He determined the replacement cost of the structure, using the Marshall Swift Valuation Service and the segregated method. He determined the replacement cost new (building and site improvements) to be:

for January 2, 2006 \$2,292,983;
for January 2, 2007 \$2,874,303; and
for January 2, 2008 \$ 2,933,802.

He determined that the physical depreciation for the building, including both incurable long lived and short lived items, was approximately 15% for 2006, 19% for 2007, and 22% for 2008. He found no functional obsolescence.

Mr. Boris opined that there was economic obsolescence due to an oversupply of new retail properties developed in the Woodbury area. He stated that the supply of new retail properties increased by nearly 35% (net leasable area) while retail sales did not increase by the same amount. He determined the economic obsolescence to be 6% for 2006, 7% for 2007, and 6% for 2008. After determining and applying construction interest, property tax, legal and other fees and 10% entrepreneurial profit, he found the depreciated value of the improvements.

After adding the land values, Mr. Boris concluded to values under the cost approach as follows:

January 2, 2006

Building and site, depreciated	\$2,411,579
<u>Land</u>	<u>\$1,155,000</u>
Total rounded	\$3,565,000.

January 2, 2007

Building and site, depreciated	\$2,420,493
<u>Land</u>	<u>\$1,190,000</u>
Total rounded	\$3,610,000.

January 2, 2008

Building and site	\$2,417,457
<u>Land</u>	<u>\$1,190,000</u>
Total	\$3,610,000.

Respondent argues that because there is no indicated economic obsolescence, Mr. Boris's cost approach analysis is flawed. If there was overdevelopment, this, Respondent argues, would have been reflected in Washington County vacancy rates and cap rates; and these have actually been decreasing. Further, economic obsolescence is not based on planning, but rather on actual construction.¹⁵ We agree. While there were plans for future development, there was no indication of actual constructions. We find no economic obsolescence.

Mr. Boris's cost approach is significantly flawed. He did not analyze the actual costs of construction in determining the replacement value for this fairly new building. His vacancy rate is not supported by the actual vacancy rate. His numbers for physical deterioration are not supported by the pictures or testimony. His value for land is not based on comparable properties. For these reasons, we give no weight to Mr. Boris's cost approach. We find arrive at no value under the cost approach.

Reconciliation

Mr. Boris found the value of the Subject Property under the three approaches to be as follows:

January 2, 2006

Cost Approach	\$ 3,565,000
Sales Approach	\$ 3,580,000
Income Approach	
Direct Capitalization	\$ 3,190,000
Discounted Cash Flow	\$ 3,150,000

Correlated Final Value Estimate **\$3,370,000.**

¹⁵ See, The Pep Boys, at 11.

January 2, 2007

Cost Approach	\$ 3,610,000
Sales Approach:	\$ 3,690,000
Income Approach	
Direct Capitalization	\$ 3,360,000
Discounted Cash Flow	\$ 3,150,000

Correlated Final Value Estimate **\$3,450,000.**

January 2, 2008

Cost Approach	\$ 3,610,000
Sales Approach:	\$ 3,580,000
Income Approach	
Direct Capitalization	\$ 3,360,000
Discounted Cash Flow	\$ 3,300,000

Correlated Final Value Estimate **\$3,465,000.**

Mr. Boris testified that he gave equal weight to all three approaches, but actually, he gave more weight to the income approach as he gave equal weight to his direct capitalization approach and to his band of investments approach. In his appraisal he stated that he relied primarily on the income approach. This statement is consistent with his testimony as he gave the income approach more weight than his other approaches.

As discussed above All of Mr. Boris's approaches were significantly flawed. We cannot arrive at a conclusion of value for the Subject Property using Mr. Boris's analysis. Here, Petitioner has failed to meet its burden of proof to establish that the Subject Property was over-assessed. Thus, we affirm the Washington County Assessor's estimated market value for January 2, 2006, January 2, 2007, and January 2, 2008.

Expert Testimony: County Appraisal Report

Robin Nelson, A.M.A., Washington County Commercial Assessor, prepared an appraisal report for the Subject Property. After Ms. Nelson took the stand during trial, Respondent moved for admission of the appraisal. Petitioner's counsel stated that he might have an objection and requested voir dire. Ms. Nelson testified that she was not a licensed appraiser in Minnesota; rather, she is a licensed assessor. (Tr. at 310.) She testified that she worked on the appraisal alone. (Tr. at 309.) She also testified that it was not completed in order to determine the assessments on the assessment dates, "[t]hose numbers were already established." (Tr. at 309.) The numbers for the assessment were different from those in her appraisal. (Tr. at 309.) Counsel then asked the following questions:

Mr. Martin: "But for purposes of this document, you're working on preparing a real estate appraisal that rises to the level of a USPAP compliant real estate appraisal; correct?"

Ms. Nelson: "Correct "

Mr. Martin: "Not an assessment for tax purposes; correct?"

Ms. Nelson: "Correct." (Tr. at 310-11.)

Petitioner's counsel, Mr. Martin, then objected to the admission of the appraisal report and moved to exclude it. The Motion was to exclude pursuant to Minn. Stat. § 270.41, subd. 5, which prohibits a licensed assessor from making appraisals or preparing an appraisal report for property within that assessor's jurisdiction. Violation of the provision results in immediate revocation of the assessor's license. There is an exclusion for duties required for property tax

assessment or if a formal resolution has been adopted specifically allowing the work if it is related to condemnation, right-of-way acquisitions or special assessments.

The statute provides:

Subd. 5. Prohibited activity.

A licensed assessor or other person employed by an assessment jurisdiction or contracting with an assessment jurisdiction for the purpose of valuing or classifying property for property tax purposes is prohibited from making appraisals or analyses, accepting an appraisal assignment, or preparing an appraisal report as defined in section 82B.02, subdivisions 2 to 5, on any property within the assessment jurisdiction where the individual is employed or performing the duties of the assessor under contract. Violation of this prohibition shall result in immediate revocation of the individual's license to assess property for property tax purposes. This prohibition must not be construed to prohibit an individual from carrying out any duties required for the proper assessment of property for property tax purposes. If a formal resolution has been adopted by the governing body of a governmental unit, which specifies the purposes for which such work will be done, this prohibition does not apply to appraisal activities undertaken on behalf of and at the request of the governmental unit that has employed or contracted with the individual. The resolution may only allow appraisal activities which are related to condemnations, right-of-way acquisitions, or special assessments.¹⁶

After receipt of the Motion to Exclude and discussion with counsel, the Court adjourned to allow Respondent time to respond. Petitioner and Respondent both submitted briefs. At the continued hearing several weeks later, the Court sustained the objection because Ms. Nelson as a licensed assessor, not a licensed appraiser, had prepared the appraisal report for a property within her jurisdiction. She testified that the preparation of the appraisal and report were not part of her assessing duties.

¹⁶ Minn. Stat. § 270.41, subd. 5.

In its post trial brief, Respondent argues that the preparation of the appraisal and testimony in Court were part of Ms. Nelson's duties as an assessor, that testimony in Tax Court is part of the assessing process, and that the Tax Court determination of value is part of the assessment of property. Respondent also argued that this Court has allowed many assessors who were not licensed appraisers to prepare appraisal reports and testify about those reports in Tax Court.

First, while it is true that we have allowed many assessors who were not also licensed appraisers to prepare and testify about their appraisals, this is the first case in which an objection has been raised pursuant to Minn. Stat. § 270.41, subd. 5. Neither Petitioner, Respondent, nor the Court could find any case in which this statute was cited or relied upon. According to Respondent, Minn. Stat. § 270.41 was passed in the early 1990s in reaction to the role of bad real estate loans in the Savings and Loan crisis and pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989. The intent of the statute, according to Respondent, was to prevent assessors from moonlighting as appraisers on behalf of taxpayers in the assessor's jurisdiction.

When the language of a taxing statute is clear and unambiguous, the Court may not engage in further construction of its intended meaning.¹⁷ Here, the language of the statute is clear in specifying when an assessor may prepare an appraisal in his or her jurisdiction. The statute allows preparation of appraisals first, when it is part of the assessor's duties in assessing property for property tax

¹⁷ Minn. Stat. § 645.16 (2008). McLane Minnesota v. Commissioner of Revenue, ___ N.W.2d ___ (Minn. 2009); Willmus v. Commissioner of Revenue, 371 N.W.2d 210, 212 (Minn. 1985).

purposes. Second, there is an exception to the prohibition when, pursuant to a formal governmental resolution, the assessor prepares an appraisal related to condemnation, right-of-way or special assessments.

Here, application of the first exclusion to the prohibition, allowance of appraisal preparation when part of the assessor's assessment duties, is not supported by the facts. Ms. Nelson testified that the appraisal was not done as part of the assessment. (Tr. at 309–11.) Those numbers for the assessment were established and were different from those in her appraisal. (Tr. at 309–11.) Respondent's argument that Ms. Nelson was performing the appraisal as part of her assessment duties contradicts Ms. Nelson's testimony and is without merit.

The second category for allowing preparation of an appraisal is when it is pursuant to a specific governmental resolution for condemnations, rights-of-way or special assessments. Here, Ms. Nelson's appraisal was not prepared pursuant to a formal governmental resolution related to condemnation, right-of-way or special assessments. An appraisal for Tax Court purposes does not fall within the exclusion. If the legislature had intended that an assessor could prepare appraisals for Tax Court purposes, it could have easily included it in the list of allowed categories.

Respondent's assertion that the prohibition was meant to prevent assessors from appraising on behalf of taxpayers is without merit. Minnesota Statute Section 270.41, subd. 5 contains no language to indicate that it is limited to the representation of taxpayers.

We sustained the objection to the appraisal report and disallowed Ms. Nelson's testimony as an expert. We did rule that she could testify as a lay witness. After this ruling, Ms. Nelson did not testify any further. Respondent called no other witnesses.

Respondent requests that the Court re-hear the assessor issue, in part because the objection came as a surprise. The request is also based on Affidavits and Exhibits attached to Respondent's Post-trial Briefs, asserting that the Tax Court appraisal was part of Ms. Nelson's duties as an assessor. We understand that the objection to the appraisal and Ms. Nelson's testimony came as a surprise to Respondent. That is why we continued the hearing for two weeks and allowed Respondent time to respond. Respondent attached Affidavits and Exhibits to the Post-trial Briefs asserting that preparation of the appraisal was within Ms. Nelson's duties as an assessor. We are not persuaded by these Affidavits or Exhibits, as they directly contradict Ms. Nelson's testimony at trial, which we found credible.

Therefore, under the plain language of Minn. Stat. § 270.41, subd. 5, and pursuant to the assessor's testimony that the appraisal report was not part of her assessing duties for the Subject Property, we find it is proper to sustain the objection of Petitioner and grant the Motion to Exclude.

Conclusion

For all of the foregoing, we affirm the Washington County Assessor's estimated market value of the Subject Property for all three assessment dates.

K. H. S.