

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 37-033-06-1-4-00001
Petitioners: John, Elaine, William and Harriet Dyke
Respondent: Jasper County Assessor
Parcel No.: 014-01068-00
Assessment Year: 2006

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Jasper County Property Tax Assessment Board of Appeals (the PTABOA) by written document.
2. The Petitioners received notice of the decision of the PTABOA on April 21, 2008.
3. The Petitioners filed an appeal to the Board by filing a Form 131 Petition on May 21, 2008. The Petitioners elected to have this case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 10, 2008.
5. The Board held an administrative hearing on August 19, 2008, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: John A. Dyke, Petitioner
Roy Gouwens, Appraiser

For Respondent: Richard Potts, Jasper County Assessor
Joshua D. Pettit, Consultant, Nexus Group.

Facts

7. The subject property is a mini-warehouse storage facility located at 5844 West State Road 10, Demotte, in Wheatfield Township, Jasper County.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$31,200 for the land and \$276,700 for the improvements, for a total assessed value of \$307,900.
10. The Petitioners requested an assessment of \$218,000.

Issues

11. The Petitioners contend that the subject property is over-assessed and presented the following evidence in support of their contentions:
 - a. The Petitioners contend the assessed value is over-stated compared to its appraised value of \$218,000. *Gouwens testimony*. In support of this contention, the Petitioners presented a summary residential appraisal report prepared by Mr. Roy Gouwens, an Indiana certified residential appraiser. *Petitioner Exhibit 1*. The appraiser valued the property as of January 1, 2005, using the cost and the sales comparison approaches to value. *Id.*
 - b. Under his cost approach valuation, Mr. Gouwens testified that he used two sources to determine the cost to reproduce the buildings. *Gouwens testimony*. Mr. Gouwens' first source, a builder, estimated that each of the three mini warehouse storage buildings could be replaced for \$48,000 at 2008 costs.¹ *Id.*; *Petitioner Exhibit 1, pp. 12, 13 and 32*. The appraiser testified that he then calculated the builder's cost for January 1, 2005, and determined a cost per square foot of \$11.47. *Id.* Mr. Gouwens testified that he also used Marshall & Swift, a national cost service guide, to calculate the replacement cost new of the buildings and determined a cost per square foot ranging from \$15.12 to \$21.31 per building. *Gouwens testimony; Petitioner Exhibit 1, pp. 12-14*. According to Mr. Gouwens, he consulted with other appraisers and realtors as well as researching manufacturers' warranties for similar types of storage buildings and estimated the total economic life of the subject buildings to be 30 years. *Id.* Mr. Gouwens used the effective age of each building divided by a 30 year total economic life to arrive at the percentage of depreciation. *Id.* The appraiser then selected a value between the depreciated "builder's" value and the depreciated value using Marshall & Swift as his

¹ Building 4 is a light manufacturing facility. Mr. Gouwens did not have a cost estimate from the builder for this building.

estimated cost for each building. *Id.* Finally, Mr. Gouwens added the total improvement value of \$187,000 to the assessed land value of \$31,200 and estimated the value of the property as a whole to be \$218,000 under the cost approach. *Id.*

- c. Mr. Gouwens testified that he also considered the sales comparison approach to value when he estimated the value of the subject property. *Gouwens testimony; Petitioner Exhibit 1, pp. 15-22.* The appraiser found two sales of mini-storage facilities in Jasper County. *Id.* According to Mr. Gouwens, both sale prices included goodwill or ongoing concern value. *Id.* For his first comparable, the Petitioners contend that the \$250,000 sales price included \$114,000 for goodwill. *Gouwens testimony; Petitioner Exhibit 1 at 32.* Mr. Gouwens based the \$114,000 estimate of goodwill on a letter from a realtor who stated that the sales price included \$10,000 for the land and because “the buildings cost the previous owner \$42,000 per building, totaling \$126,000” the remaining \$114,000 was attributable to goodwill. *Gouwens testimony; Petitioner Exhibit 1 at 17.* Similarly, Mr. Gouwens testified that the second comparable property sold for \$300,000 in 2000. *Gouwens testimony; Petitioner Exhibit 1 at 20 and 21.* According to Mr. Gouwens, he asked the purchaser if the reason he paid \$146,900 more for the property than the property’s assessed value was for the ongoing concern, the buyer said “that was right.” *Id.* The appraisal states that therefore he made the “extraordinary assumption” that the real estate portion of the sale was \$159,100. *Id.* Mr. Gouwens testified that he also made adjustments for differences in size and location and, using the sales comparison approach, he calculated the subject property’s value to be \$235,000. *Id.*
- d. The appraiser testified that he considered the income approach to value but was unable to locate sufficient reliable income data from the properties to accurately determine a value using that approach. *Gouwens testimony; Petitioner Exhibit 1 at 6.* Similarly, the appraiser contends, he was not “able to find a reliable multiplier.” *Gouwens testimony.* Further, Mr. Gouwens argued, the income approach is not required “because the assessor did not perform that approach.” *Id.*
- e. Mr. Gouwens concluded that the cost approach and the market value approach “supported the value that we thought would be acceptable” and testified that that was “why we are presenting these two values.” *Id.* In reconciling the various values, Mr. Gouwens testified that he chose the cost approach value because it was lower: “naturally, in favor of the taxpayer here, we’re going with the lower approach to value, the cost approach.” *Gouwens testimony.* In response to cross examination questions, Mr. Gouwens testified that the purpose of the appraisal was to provide “evidence for appeal by taxpayer John Dyke to have taxes on the subject property lowered.” *Id.*

- f. Finally, in response to the Respondent's argument, the Petitioners contend that the Respondent's summary of sales includes a sale that occurred after the valuation date. *Gouwens testimony*. Mr. Gouwens argues that the Respondent failed to show that the properties used in the summary of sales are comparable to the subject property. *Id.* The Petitioners also objected to Respondent Exhibit 3, *Self-Storage Research Semiannual Report*, because the information contained therein was not for 2005 and only one of the listed sales was in Indiana.² *Id.*
12. The Respondent presented the following evidence:
- a. The Respondent contends the subject property is not over-assessed and may, in fact, be under-assessed. *Pettit testimony; Potts testimony*. In support of this contention, the Respondent presented a summary of sales of mini-warehouses that ranged from \$20.76 per square foot to \$26.16 per square foot. *Respondent Exhibit 2*. According to Mr. Pettit, the median sale price per square foot of the comparable properties is \$20.86. *Id.; Pettit testimony*. The subject property's improvements are currently assessed for only \$17.20 per square foot for the mini-warehouse facility and \$35,500 for the former manufacturing facility.³ *Pettit testimony*. Even if the former manufacturing facility is included, the Respondent contends, the improvements are assessed for only \$19.44 per square foot. *Id.* Thus, the Respondent argues, the assessment of the mini-warehouse portion of the property should be increased to the median sale price of \$20.86 per square foot. *Pettit testimony*.
- b. The Respondent admitted that the appraiser was qualified to appraise the Petitioners' property, but argues that the Petitioners' appraisal is flawed.⁴ *Pettit testimony; Potts testimony*. According to Mr. Pettit, the objectivity of the Petitioners' appraisal is in question because the use and function of the appraisal is to lower taxes. *Pettit testimony*. Also, the Respondent contends, the value of the property should be based on the income approach to value.

² The Petitioners objected to Respondent Exhibit 3 because the article was published after the valuation date in 2005. It also included only one sale of a mini-storage facility in Indiana. The Respondent claims the article, while current, was submitted to establish a background of the storage facility business and the trends affecting it. The Board considers the article to be relevant, not for the sale or for trends affecting the industry after the valuation date, but because it indicates income information and capitalization rates were available for those willing to research such sources.

³ The facility has a 3,072 square foot area that was formerly used for manufacturing. The mini-warehouse area is 15,840 square feet.

⁴ At the time of this hearing, the Board heard three additional cases involving mini-warehouse units between the Jasper County Assessor and a Petitioner offering Mr. Gouwens as an appraiser. *See Demotte Property Management LLC v. Jasper County Assessor*, Petition No. 37-024-06-1-4-00002; and *Demotte U-Lock, LLC v. Jasper County Assessor*, Petition Nos. 37-024-06-1-4-00004 and 37-033-06-1-4-00003. In those cases, the Respondent attacked Mr. Gouwens' credibility, alleging that he was neither licensed nor competent to appraise commercial property. The Board found that Mr. Gouwens' appraiser and broker's licenses allowed him to appraise the properties, but found that he lacked experience in appraising commercial properties.

Id. Moreover, Mr. Potts argues, the Petitioners' appraiser failed to take the depreciation from the market in his cost approach valuation. *Id.* Finally, the Respondent contends, the Petitioners' appraiser erred when he deducted "goodwill" from the comparable properties' sales prices. *Pettit testimony.* According to the Respondent, goodwill value is not attributable to a mini-warehouse unless the property has a brand name such as "U-Haul." *Id.* In most cases, the Respondent contends, people choose a storage facility based on price and location. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The compact disk recording of the hearing labeled 37-033-06-1-4-00001 Dyke Hearing,
 - c. Exhibits:

Petitioner Exhibit 1 – Summary Residential Appraisal Report,

Respondent Exhibit 1 – Property record card (PRC) for the subject property,

Respondent Exhibit 2 – Summary of Mini-Warehouse Sales,

Respondent Exhibit 3 – Self-Storage Research Semiannual Report from Marcus & Millichap,

Respondent Exhibit 4 – PRC for the property located at 524 E. Penn Street, Wheatfield,

Respondent Exhibit 5 – Sales disclosure form for 524 E. Penn Street, Wheatfield,

Respondent Exhibit 6 – PRC for the property located at U. S Hwy. 231, Remington,

Respondent Exhibit 7 – Sales disclosure form for U. S. Hwy. 231, Remington,

Respondent Exhibit 8 – PRC for the property located at 2424 E. U.S. Hwy 41, Warren County,

Respondent Exhibit 9 – Sales disclosure form for 2424 E. U.S. Hwy 41, Warren County,

Board Exhibit A - Form 131 petition and all subsequent mailings to the Board,

Board Exhibit B - Notice of Hearing,

Board Exhibit C - Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to support an in error in assessment. The Board reached this decision for the following reasons:
- a. Real property is assessed on the basis of its “true tax value,” which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost, sales comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See MANUAL* at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is

consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

- c. The Petitioners contend that the assessed value of the subject property is overstated based on the appraised value of the property. The Petitioners rest their entire case on Mr. Gouwens' opinion of the subject property's value. Mr. Gouwens certified that he formed his opinion in conformity with USPAP after applying two generally accepted approaches to value—the cost and sales-comparison approaches. In form, therefore, Mr. Gouwens' valuation opinion meets the criteria described by the Manual and Tax Court for evidence that may be used to rebut the presumption that an assessment is correct. In practice, however, the appraisal was deeply flawed.
- d. First, Mr. Gouwens was biased. Mr. Gouwens testified that the purpose of the appraisal was to provide “evidence for appeal by taxpayer John Dyke to have taxes on the subject property lowered.” Further, he used the cost approach and the market value approach because those approaches “supported the value that we thought would be acceptable.” Finally, in reconciling the various values, Mr. Gouwens testified that “naturally, in favor of the taxpayer here, we're going with the lower approach to value, the cost approach.” Thus, the appraiser made choices in his valuation to achieve the lowest value in the client's best interest rather than making those determinations based on sound appraisal practices. This kind of “results oriented” appraisal lacks credibility.
- e. The adjustments that Mr. Gouwens made to his comparable sale prices to account for goodwill and going concern value compound the doubts created by his bias. Goodwill and going-concern value are intangible property that can be sold and valued. Like Mr. Gouwens, courts have often used the terms interchangeably, although they represent slightly different concepts. *UFE, Inc., v. Commissioner of Internal Revenue*, 92 T.C. 1314, 1323, 1989 U.S. Tax Ct. LEXIS 90 * 18 (1989). Indiana courts have defined goodwill in various ways, all of which generally focus on the value of relationships with customers.⁵ By contrast, at least some courts have described going-concern value as less related to business reputation and customer loyalty than to the operating relationship of assets and personnel inherent in an ongoing business. *UFE*, 92 T.C. at 1314.

⁵ *Eg.*, *Yoon v. Yoon*, 711 N.E.2d 1265, 1268 (Ind. 1999)(defining goodwill as “the element of value which inheres in the fixed and conducted business. It is the probability that old customers will return to the old place of business.”); *Berger v. Berger*, 648 N.E.2d 378, 383 (Ind. Ct. App. 1995)(defining goodwill as “the probability that old customers of the firm will resort to the old place of business where it is well-established, well-known, and enjoys the fixed and favorable consideration of its customers.”).

- f. In his sales comparison approach valuation in the appraisal, Mr. Gouwens presented two sales of mini-storage facilities. The first comparable sold for \$250,000 on August 11, 2003. The other property sold for \$306,000 on July 6, 2000. According to the appraiser, both sales included goodwill and he adjusted the sales prices downward by \$114,000 and \$146,900, respectively. There is at least some evidence that the sales included things other than real property. Mr. Gouwens testified that the buyer of the first comparable property stated that he purchased the seller's business along with the subject property. The buyer of the second comparable also said that a going concern was included in that property's sale price. Neither buyer, however, described what purchasing the "business" or "going concern" entailed. Despite the lack of detail about what the buyers actually purchased, Mr. Gouwens attributed more than 45% of the comparable properties' sale prices to goodwill and going-concern value.
- g. Mr. Gouwens based his \$114,000 estimate of goodwill for the first property on a letter from the realtor who stated that the sales price included \$10,000 for the land and because "the buildings cost the previous owner \$42,000 per building, totaling \$126,000" the remaining \$114,000 was attributable to goodwill. Mr. Gouwens' adjustment was purely the broker's opinion. It had nothing to do with what the parties to the sale thought and, although the broker had experience selling real estate, the Petitioners did not present any evidence that the broker had appraisal training or experience. Similarly, the purchaser of the second comparable agreed that the reason he paid \$146,900 more for the property than the property's assessed value was for the ongoing concern. Thus, the appraiser's method for allocating the sale price between real property and goodwill or going-concern value for the second comparable property was equally problematic. He simply subtracted the property's assessed value from its overall sale price. More accurately, he pointed the buyer to the difference between the sale price and assessment and let the buyer draw that conclusion for him.
- h. Thus, Mr. Gouwens based his goodwill adjustments on (1) the valuation opinion of someone without appraisal training or experience who, as far as the evidence shows, did not apply USPAP to his valuation, and (2) blind acceptance of the second property's assessment. The record does not show what an accepted method might be for allocating a sale price between the price attributable to real property and the value attributable to goodwill or going-concern value, but the Board has little trouble finding that Mr. Gouwens' approach does not reflect generally accepted appraisal principles.
- i. In his cost approach to value, the Petitioners' appraiser used an unidentified local builder's 2008 estimate of a cost to construct the mini-warehouse improvements and trended it back to 2005. The appraiser also used Marshall & Swift to calculate the replacement cost new of each building. The appraiser, however, did not use Marshall & Swift to determine the total

economic life of the improvements. Instead, the appraiser chose to select a 30-year economic life based on information from an unidentified “manufacturer’s website.” The appraiser then estimated the value of each building using both the builder’s depreciated cost estimate and Marshall & Swift’s depreciated cost estimate. Based on these two calculations, Mr. Gouwens chose a value between the two estimates. The appraiser provided no basis for the final estimated cost of the improvements which was neither the builder’s cost nor the Marshall & Swift cost estimate.

- j. Further, to estimate the cost approach value of the property, Mr. Gouwens added his estimated cost of the improvements to the assessed value of the land to arrive at his \$218,000 estimate of value pursuant to the cost approach. Mr. Gouwens again identifies this as an “extraordinary assumption.” In most cases, separately valuing one component of an integrated property using individual appraisal techniques, while blindly accepting the mass-appraisal value assigned to the remaining components, creates a risk of distorting the true market value-in-use of the property. There may be instances where such an approach is acceptable. However, a taxpayer must show that its approach complies with generally accepted appraisal principles. Without more than a contention that “the value of the land as determined by the Assessor is not in dispute,” the Board finds that adding an assessed land value to an appraised improvement value is not probative of the market value in use of the property as a whole.
- k. Finally, the Petitioners’ appraiser did not do an income approach valuation because he contends he was unable to locate sufficient reliable income data from like properties. The property is an income-producing property and, while it may not be required, an income approach valuation would have been the best indicator of value. The Petitioners’ appraiser could have obtained information from the Petitioners and another client who had two mini-storage facilities on appeal. *See Demotte Property Management LLC v. Jasper County Assessor*, Petition No. 37-024-06-1-4-00002; and *Demotte U-Lock, LLC v. Jasper County Assessor*, Petition Nos. 37-024-06-1-4-00004 and 37-033-06-1-4-00003. The appraiser could also have obtained gross income information from the market and expenses and capitalization rates from professional publications. This, he chose not to do.
- l. Mr. Gouwens’ apparent bias and lack of experience appraising commercial properties render his opinion, as a whole, too unreliable to be given any probative weight. Thus, the Petitioners have failed to raise a prima facie case that their property is over-valued.⁶

⁶ The Petitioners also contend that their taxes increased 48% between 2005 and 2006. The Board has no jurisdiction over the tax rate applied to the assessments. Further, each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm’rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus,

- m. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. Because we find that Mr. Gouwens' valuation opinion was too unreliable to carry any probative weight, the Petitioners failed to meet its burden. We therefore find for the Respondent. No change in the assessment is warranted.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

evidence as to a property's assessment or taxes in one tax year is not probative of its true tax value in a different tax year. *See, Id.*

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>