

REPRESENTATIVES FOR RESPONDENT:
Richard Potts, Jasper County Assessor
Joshua D. Pettit, Consultant, Nexus Group

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Demotte U-Lock, LLC	)	Petition No.:	37-024-06-1-4-00004
)		
	)	Parcel:	015-01183-00
Petitioner,)		
)		
v.)		
	)	County:	Jasper
Jasper County Assessor	)	Township:	Keener
	)	Assessment Year:	2006
Respondent)		

Appeal from the Final Determination of
Jasper County Property Tax Assessment Board of Appeals

November 17, 2008

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the subject property is over-assessed in light of an appraisal that estimates a lower value.

PROCEDURAL HISTORY

2. On April 21, 2008, the Jasper County Property Tax Assessment Board of Appeals (“PTABOA”) issued its assessment determination upholding the Wheatfield Township Assessor’s 2006 assessment of the subject property.
3. On May 21, 2008, the Petitioner filed a Form 131 Petition for Review of Assessment, asking the Board to review the subject property’s 2006 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (“ALJ”), Ellen Yuhan, held a hearing on August 19, 2008, in Rensselaer, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner: Richard J. Cook, Jr., member and manager of Demotte U-Lock, LLC,
Roy Gouwens, appraiser.

For the Respondent: Joshua D. Pettit, Nexus Group,
Richard Potts, Jasper County Assessor,
Earl Walton, PTABOA chairman.¹

6. The Petitioner presented the following exhibit:
Petitioner Exhibit 1 – Summary Residential Appraisal Report.
7. The Respondent presented the following exhibits:

¹William L. Woods was sworn as a witness but did not testify.

Respondent Exhibit 1 – August 12, 2008, e-mail from Tim Jorczak to Sandra Lackey and excerpt from “Glossary for Property Appraisal and Assessment”

Respondent Exhibit 2 – Summary of Mini-Warehouse Sales

Respondent Exhibit 3 – Property record card (“PRC”) for 524 E. Penn Street, Wheatfield

Respondent Exhibit 4 – Self-Storage Research Semiannual Report from Marcus & Millichap

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

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

Respondent Exhibit 7 – Sales disclosure form for U.S. Hwy 24 W and U. S. Hwy. 231, Remington

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

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

Respondent Exhibit 10 – PRC for the subject property.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition

Board Exhibit B – Notice of hearing dated July 10, 2008

Board Exhibit C – Sign-in sheet.

9. At the parties’ request, and as allowed by the Board’s procedural rules, the ALJ took official notice of the record of proceedings in *Demotte U-Lock, LLC v. Jasper County Assessor*, Pet. No. 37-024-06-1-4-00003 (“Pet. 00003”). See 52 IAC 2-7-4(a)(2) (allowing the Board to take official notice of other proceedings

before the Board). The ALJ heard Pet. 00003 immediately before beginning the hearing in this case, and the two cases involved the same parties and witnesses.²

10. The ALJ did not inspect the subject property.
11. For 2006, the PTABOA determined the assessed value of the property to be:
Land: \$36,900 Improvements: \$169,200 Total: \$206,100
12. The Petitioner contends the assessed value should be:
Land: \$36,900 Improvements: \$70,100 Total: \$107,000

JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

FINDINGS OF FACT

14. The Petitioner operates the subject property as a mini storage facility. *Gouwens testimony*. The property is located at 1413 Forsythia Street, in Demotte. It has three buildings that sit on .62 acres of land. *Pet'r Ex. 1 at 4*. The buildings were built in 1987, 1998 and 1998. *Pet'r Ex. 1 at 15-16*.
15. The Petitioner offered an appraisal report prepared by Roy Gouwens. *Pet'r Ex. 1*. Mr. Gouwens is a certified residential appraiser. *Gouwens testimony; Pet'r Ex. 1*

² The Board is entering separate findings of fact and conclusions of law for Pet. 00003.

- at 7. He is also a licensed real estate broker. *Id.* Mr. Gouwens testified that, as a certified residential appraiser, he can perform the highest level of residential appraisals. *Gouwens testimony, hearing on Pet. 00003.* In his view, he is not precluded from doing commercial appraisals if he feels competent to complete the assignment. *Id.* But he has not appraised “a lot” of commercial properties. *Id.*
16. In his appraisal report, Mr. Gouwens alternately described the purpose and function of his assignment as being to provide “[e]vidence for appeal by tax payer Richard Cook to have taxes on the subject property lowered” and “to appraise the value of the property for tax assessment purposes, provided and appraisal report, which shall be presented to the Jasper County Assessor.” *Pet’r Ex. 1at 4, 8.*
 17. Mr. Gouwens estimated the subject property’s market value at \$107,000 as of January 1, 2005. *Gouwens testimony; Pet’r Ex. 1at 26.* Mr. Gouwens formed his opinion using the cost and sales-comparison approaches to value. In his appraisal report, Mr. Gouwens said that he did not apply the income approach because (1) the Jasper County Assessor did not use that approach in assessing the subject property, and (2) he could not obtain sufficient data to formulate a reliable capitalization rate. *Pet’r Ex. 1 at 25.* When asked why he did not use the income approach to appraise the mini storage facility at issue in Pet. 00003, Mr. Gouwens gave an additional reason, saying that he used “the approaches to value that are for our best case, our best interest.” *Gouwens testimony.*
 18. In his cost-approach analysis, Mr. Gouwens determined the cost of reproducing the buildings primarily from two sources—a builder that had built similar buildings and cost guides published by Marshall & Swift. *Gouwens testimony; Pet’r Ex. 1at 14-16.* He then determined a depreciation percentage based on each building’s age and economic life. *Pet’r Ex. 1 at 14-16.* He applied that depreciation percentage to the separate replacement cost estimates that he derived from the builder and Marshall & Swift and determined an average depreciated replacement cost for each building. *Id.* Finally, he added the rounded average for

- each building to the subject property's land assessment to reach a total estimate of \$110,900. *Pet'r Ex. 1 at 16.*
19. In performing his sales-comparison analysis, Mr. Gouwens focused on two sales from Jasper County. *Gouwens testimony; Pet'r Ex. 1 at 17-26.* The first sale was the Petitioner's 2003 purchase of a mini storage facility located at 524 E. Penn Street in Wheatfield. *Id.* The sales disclosure form for that sale listed the price as \$250,000. *Resp't Ex. 5.* While the sale included the seller's business, the Petitioner offered no evidence that it bought tangible assets other than the real estate. *See Cook testimony; Gouwens testimony; Pet'r Ex. 1.* Mr. Gouwens, however, concluded that the sale included amounts attributable to goodwill and going-concern value. *Gouwens testimony; Pet'r Ex. 1.*
 20. To quantify the portion of the sale price attributable to goodwill and going-concern value, Mr. Gouwens spoke to Thomas E. Fritts, the broker who handled the sale. *Gouwens testimony.* Mr. Fritts prepared a letter saying that the previous owner had paid \$126,000 for the three buildings, and that the remainder of the \$250,000 sale price was attributable to the land (\$10,000) and "goodwill or customer base" (\$114,000). *Pet'r Ex. 1 at 34.* Mr. Fritts came up with those numbers on his own. The seller had not known how much to market the property for, and Mr. Fritts told her what the land, buildings, and business were worth, respectively. *Cook testimony Pet. 00003.*
 21. Based on Mr. Fritts's opinion, Mr. Gouwens adjusted the Wheatland property's sale price by \$114,000. *Gouwens testimony; Pet'r Ex. 1 at 19.*
 22. The second purportedly comparable property, located in Remington, sold for \$300,000. *Pet'r Ex. 1 at 19.* It had locations on two streets, but Mr. Gouwens did not say whether the locations were contiguous. *Id.; see also Gouwens testimony.* Mr. Gouwens interviewed the Remington property's buyer who, like Mr. Cook, thought that he was buying a going concern along with real estate. *Gouwens testimony; Pet'r Ex. 1 at 20.* When Mr. Gouwens told the buyer that the property

was assessed for only \$159,100, the buyer said that he had paid the additional amount because the business/ongoing-concern value was included in the sale price. *Petitioner Exhibit 1 at 22*. Mr. Gouwens therefore made the “extraordinary assumption” that the portion of the sale price attributable to the real estate was \$159,100. *Id.*

23. Mr. Gouwens also adjusted the comparable properties’ sale prices to account for size-related differences between those properties and the subject property. The two properties’ adjusted sale prices were \$104,850 and 109,550. Based on those prices, Mr. Gouwens estimated the subject property’s value at \$107,000 under the sales comparison approach. *Pet’r Ex. 1 at 24*.
24. Mr. Gouwens reconciled his conclusions under the cost and sales-comparison approaches to reach a final value estimate of \$107,000. *Gouwens testimony; Pet’r Ex. 1 at 26*. He felt that his conclusions under the cost approach supported the assumptions that he made under the sales-comparison approach. *Pet’r Ex. 1 at 26*.

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

25. A taxpayer seeking review of an assessing official’s determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). If the taxpayer meets that burden, the assessing official must offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479. But the

- burden of persuasion remains with the taxpayer. *See Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).
26. Of course, that begs the question of how a taxpayer may go about meeting its burden of proof. To answer that question, the Board turns to the 2002 Real Property Assessment Manual and the basic principles underlying Indiana's assessment system.
27. Indiana assesses real property based on its true tax value, which Manual defines as "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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (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 set forth in the Real Property Assessment Guidelines for 2002 – Version A.
28. 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 2006). 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 ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

B. Mr. Gouwens's Appraisal

29. The Petitioner rests its entire case on Mr. Gouwens's 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. Thus, at least in form, Mr. Gouwens's 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.
30. But the Respondent pointed to problems with Mr. Gouwens's credibility and flaws in his methodology that it felt detracted from his appraisal's reliability. The Board largely agrees with the Respondent and finds that Mr. Gouwens's valuation opinion is too unreliable to be probative of the subject property's market value-in-use.

1. Mr. Gouwens's qualifications, lack of experience, and bias

31. The Respondent first attacked Mr. Gouwens's credibility, alleging that he was unqualified and biased.
32. As to Mr. Gouwens' qualifications, the Respondent argued that he was neither licensed nor competent to appraise commercial property. Mr. Gouwens responded that his license allows him to perform the highest level of residential appraisals and to appraise certain commercial properties as well. Other than multi-tenant shopping malls, Mr. Gouwens did not specify which types of commercial property he is prohibited from appraising.
33. The Board does not enforce the statutes and regulations that govern licensing appraisers. Nonetheless, the fact that an appraiser has exceeded the authority granted under his license might affect his credibility. The Board therefore

addresses whether Mr. Gouwens was licensed to appraise properties like the subject property.

34. With the exception of property involved in federally related transactions, Indiana licensed appraisers generally may appraise any type of property that they are competent to appraise under USPAP. *See* 876 IAC 3-2-3(a); *see also* IND. CODE § 25-34.1-3-8(i) and 12 U.S.C. §§ 3333 through 3352 (Title IX of the Financial Institutions Reform Recovery and Enforcement Act, setting forth license requirements for people who appraise property involved in federally related transactions). That rule, however, has limitations. Thus, a certified residential appraiser may appraise only certain types of non-residential property without having a certified general appraiser review and co-sign his report. Those allowable property types include commercial single-tenant properties, such as office buildings, retail stores, restaurants, service stations, banks, daycare centers and similar projects. 876 IAC 3-2-3(b)(3) 876 IAC 3-3-12(a)(5). They do not include commercial multi-tenant properties, such as multi-tenant office buildings, shopping centers or motels. 876 IAC 3-2-3(b); 876 IAC 3-3-12(a)(6).
35. While the subject property has multiple tenants, it arguably is closer to the single-tenant commercial facilities that a certified residential appraiser may appraise by himself than to the multi-tenant properties that require review and signature by a certified general appraiser. Also, Mr. Gouwens has a broker's license. And Indiana's statutes and regulations do not limit the rights of licensed real estate brokers to appraise property other than to the extent that federal law requires an appraiser to have an appropriate appraisal license. *See* I.C. § 25-34.1-3-8(a); 876 IAC 3-2-3(b). Because the Respondent had not pointed to any federal law governing appraisals prepared for taxpayers to use in state property tax appeals, it appears that Mr. Gouwens's broker's license allowed him to appraise the subject property even if his certified general appraiser's license did not.
36. But that does not mean that Mr. Gouwens's qualifications do much to support his valuation opinion. He has not appraised "a lot" of commercial properties.

Gouwens testimony. Given some of the judgments that Mr. Gouwens made in his appraisal, such as attributing portions of his comparable properties' sale prices to goodwill, that lack of experience hurts his credibility.

37. More importantly, Mr. Gouwens was biased. In his appraisal report, he described the appraisal's function as providing "[e]vidence for appeal by tax payer Richard Cook to have taxes on the subject property lowered." *Pet'r Ex. 1* (emphasis added). By itself, that may not mean a lot; the reference to lowering the subject property's taxes arguably addresses Mr. Cook's motives not Mr. Gouwens's. But Mr. Gouwens also responded to questions about why he did not use the income approach by saying that he used "the approaches to value for our best case, our best interests." *Gouwens testimony.*

2. Mr. Gouwens's unsupported adjustments for goodwill and going-concern value

38. The Respondent also took issue with adjustments that Mr. Gouwens made to his comparable sale prices to account for goodwill and going-concern value. Once again, the Board shares the Respondent's concerns.
39. 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.³ By contrast, at least some courts have described going-concern value as less related to business

³ *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.").

reputation and customer loyalty than to the operating relationship of assets and personnel inherent in an ongoing business. *UFE*, 92 T.C. at 1314.

40. The Board agrees that Mr. Gouwens should have adjusted the comparable properties' sale prices if they included goodwill, going concern value, or any other items that were not part of the real property being sold. And there is at least some evidence that the sales included things other than real property. Mr. Cook testified that he bought the seller's business along with the subject property. The Remington property's buyer also said that a going concern was included in that property's sale price. Neither, however, described what purchasing the "business" or "going concern" entailed.
41. Despite the lack of detail about what the buyers actually purchased, Mr. Gouwens attributed 45.6% of the Wheatland property's sale price and 47% of the Remington property's sale price to goodwill and going-concern value. He quantified the Wheatland property's adjustment by simply asking Mr. Fritts, the broker who handled the sale, to break down the sale price between real property and goodwill. As Mr. Cook testified, that breakdown was purely Mr. Fritts's opinion; it had nothing to do with what the parties to the sale thought. *Cook testimony Pet. 00003*. Although Mr. Fritts had experience selling and real estate, Mr. Gouwens did not say that the broker had any appraisal training or experience. *See Gouwens testimony*.
42. Mr. Gouwens's method for allocating the Remington property's sale price between real property on the one hand, and goodwill or going-concern value on the other, was equally problematic. He simply subtracted the property's assessed value from the 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. *See Pet'r Ex. 1 at 22*.
43. Thus, Mr. Gouwens based his adjustments on (1) the valuation opinion of someone without appraisal training or experience who, as far as the Board can

tell, did not apply USPAP, and (2) blind acceptance of the Remington property's assessment. The record does not show what an acceptable method might be for allocating a sale price between portions attributable to real property and those attributable to goodwill or going-concern value. But the Board has little trouble finding that Mr. Gouwens's approach does not reflect generally accepted appraisal principles.

44. The Board recognizes that Mr. Gouwens also used the cost approach. And the Respondent did not specifically question any of his decisions under that approach. But Mr. Gouwens gave greater weight to his conclusions under the sales-comparison approach, which, as already discussed, is tainted by his large unsupported adjustments. And he did not even use the income approach, which might have provided an additional check.
45. Thus, Mr. Gouwens's apparent bias and lack of experience appraising commercial properties together with the blatant flaws in his sales-comparison analysis render his opinion too unreliable to be given any probative weight.

SUMMARY OF FINAL DETERMINATION

46. Because the Board finds that Mr. Gouwens's valuation opinion was too unreliable to carry any probative weight, the Petitioner failed to meet its burden. The Board therefore find for the Respondent. No change in the assessment is warranted.

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

Commissioner, 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, 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>>