

REPRESENTATIVE FOR PETITIONER:  
Edwin K. DeWald, DeWald Property Tax Services

REPRESENTATIVE FOR RESPONDENT:  
Nilah Aschliman, Wells County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Pretzels, Inc.,	)	Petition No.:	90-010-07-1-3-00038
	)		90-010-07-1-3-00077
Petitioner,	)		
	)	Parcel No.:	90-08-09-100-026.000-010
	)		90-08-09-100-028.000-010
v.	)		
	)	County:	Wells
	)		
Wells County Assessor,	)	Township:	Harrison
	)		
Respondent.	)	Assessment Year:	2007

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

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**December 4, 2009**

**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:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Introduction**

1. In this assessment appeal, the Petitioner offered a valuation opinion from a witness who was not a certified or licensed appraiser although he had been one earlier in his career. Because the witness did not offer sufficient detail about the judgments and assumptions underlying his opinion, the Board finds that his opinion was not sufficiently reliable to carry probative weight.

### **Procedural History**

2. On February 25, 2008, the Petitioner filed notices with the Wells County Assessor contesting the subject parcels' assessments for 2007. On July 15, 2008, the Wells County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations lowering those assessments, but not to the level the Petitioner had requested. As a result, on July 31, 2008, the Petitioner filed Form 131 petitions with the Board. The Board has jurisdiction over the Petitioner's appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

### **Hearing Facts and Other Matters of Record**

3. On September 10, 2009, the Board's Administrative Law Judge, Joseph Stanford ("ALJ"), held a consolidated hearing on the Petitioner's appeals. Neither the Board nor the ALJ inspected the subject parcels.

4. The following people were sworn in as witnesses:

For the Petitioner:

Edwin K. DeWald, DeWald Property Tax Services  
Randall C. Warner

For the Respondent:

Nilah Aschliman, Wells County Assessor  
Michael Clough, Nexus Group

5. The Petitioner submitted the following exhibits:
  - Petitioner Exhibit H – Market value-in-use calculation
  - Petitioner Exhibit I – Photographs of subject properties
  - Petitioner Exhibit J – Photographs of comparable properties
6. The Respondent did not submit any exhibits.
7. The Board recognized the following additional items as part of the record of proceedings:
  - Board Exhibit A – The Form 131 petition
  - Board Exhibit B – Notices of hearing
  - Board Exhibit C – Hearing sign-in sheet
8. For valuation purposes, the parties treated the two parcels under appeal as a single property. The Board will do likewise. Thus, unless otherwise indicated, the Board will refer to the parcels collectively as the “subject property.”
9. The subject property is located at 123 Harvest Road, Bluffton, Indiana. It consists of a 194,749-square-foot industrial facility and an adjacent unimproved parcel. The Petitioner uses the subject property to manufacture, package, warehouse, and distribute snack foods.  
*Dewald testimony.*
10. The PTABOA determined the following values:

Parcel 90-08-09-100-026.000-010

Land: \$155,700      Improvements: \$4,721,600      Total: \$4,877,300

Parcel 90-08-09-100-028.000-010

Land: \$109,200      Improvements: \$0      Total: \$109,200

11. At hearing, the Petitioner requested a total assessment of \$3,213,400 (rounded).<sup>1</sup>

### **Administrative Review and the Parties' Burdens**

12. A taxpayer seeking review of an assessing official's determination must make 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. 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").
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach 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.

## **ANALYSIS**

### **Parties' Contentions**

#### **A. The Petitioner's contentions**

15. To support its claim that the subject property was over-assessed, the Petitioner offered market value-in-use calculations prepared by Randall C. Warner. *Pet'r Ex. H.* Mr. Warner previously was a certified general appraiser and he worked at an appraisal firm for 10 years. During that time, he valued commercial properties throughout Indiana and the rest of the country. *Warner testimony.*

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<sup>1</sup> On its Form 131 petitions, the Petitioner requested a total assessment of \$3,117,000.

16. The Petitioner’s representative, Mr. Dewald, asked Mr. Warner to value the subject property using the sales-comparison approach.<sup>2</sup> According to Mr. Dewald, who was being paid on a contingency basis, that approach was the “most applicable” valuation approach for the subject property. *Dewald testimony*. Mr. Warner looked at five other industrial and manufacturing facilities that sold in northeast Indiana. He compared those properties to the subject property along several lines, including market conditions, location, and various physical characteristics. His comparison of physical characteristics included things such as age, wall height and construction, and percentage of the building devoted to office space. Mr. Warner rated each property as “inferior,” “similar,” or “superior” to the subject property for each element of comparison. Mr. Warner then “netted out” the comparisons, giving each property an overall comparability rating. *Warner testimony; Pet’r Ex. H*.

17. In Mr. Warner’s view, three of those properties were inferior to the subject property, one was similar, and one was “highly superior.” *Id.* Mr. Warner then arrayed the sales as follows:

<b>Comparable Sales</b>	<b>Price/ Sq. Ft.</b>	<b>Total Value</b>	<b>Overall Comparability</b>
Sale 5	\$13.71	\$2,670,009	Inferior
Sale 3	\$14.52	\$2,827,555	Inferior
Sale 2	\$14.58	\$2,839,440	Inferior
Sale 1	\$16.50	\$3,213,359	Similar
Sale 4	\$25.20	\$4,907,675	Highly Superior

*Pet’r Ex. H at 2.*

18. In his “Market Value Correlation,” Mr. Warner found that the subject property was similar to Sales 1 and 4, but that Sale 1, which was located in Wells County, was the most similar. He therefore estimated a value of \$16.50 for the subject property, which he found was within the range indicated by the mean (\$14.58/sq. ft.) and median (\$16.90/sq.

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<sup>2</sup> Mr. Dewald actually testified that “we” asked Mr. Warner to use the sales-comparison approach. The Board takes that to mean that Mr. Dewald was acting as the Petitioner’s representative when he asked Mr. Warner to value the property, not that multiple people actually asked Mr. Warner to value the property.

ft.) sale prices. *Warner testimony; Pet'r Ex. H at 2.* When multiplied by the subject building's area, that per-unit price yielded a total value of \$3,213,400 (rounded) as of March 1, 2007. Mr. Warner reached the same conclusion for the property's value as of January 1, 2006, because the local market for industrial properties had not changed during that period. *Id.*

## **B. The Respondent's Contentions**

19. While the Respondent believes that the value set by the PTABOA is correct, she offered no evidence to support that value.
20. But the Respondent's witness, Michael Clough, pointed to at least three reasons why he felt that Mr. Warner's opinion was unreliable. First, according to Mr. Clough, Mr. Warner did not adjust his comparable properties' sale prices to reflect differences between those properties and the subject property in key respects such as location, age, and wall height. *Clough testimony.* Mr. Warner, however, responded that he made qualitative adjustments, which are allowed under accepted appraisal practices. *See Warner testimony.*
21. Second, Mr. Clough disagreed with the "superior" rating that Mr. Warner gave to Sale 4's wall construction. When asked why he felt that Sale 4's tilt-up-concrete construction was superior to the subject property's steel panels, Mr. Warner said that steel walls may be damaged when tow motors bang into them. *Warner testimony.* And when asked whether tilt-up-concrete was more expensive than steel, Mr. Warner simply replied that he was not sure that any cost difference was relevant to market value. *Id.* Mr. Clough, however, did not believe that tilt-up-concrete construction was more expensive than steel panel construction or that it extended a building's economic life. *Clough testimony.*
22. Third, Mr. Clough questioned whether the sales that Mr. Warner relied on were good indicators of market value. In that vein, he questioned whether those properties were sold after a sufficient holding period without any distress. *Clough testimony.* Also, given that

most of the properties were relatively new and possibly built to suit the original owners' needs, he posited that Mr. Warner may not have considered costs associated with the buyers having to convert the facilities to new uses. According to Mr. Clough, those costs potentially would have lowered the properties' effective sale prices. *Id.*

### Discussion

23. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment 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). Appraisers traditionally have 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.
24. 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). 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 (“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.
25. Here, the Petitioner offered Mr. Warner's valuation opinion. Mr. Warner, in turn, testified that he used a generally accepted valuation technique—the sales-comparison approach—to estimate the subject property's market value. Although Mr. Warner's opinion was not entirely conclusory, he did not explain his analysis in great detail either.

Thus, Mr. Warner’s opinion presents the following question: How much support for his underlying assumptions must a person giving a valuation opinion provide in order for that opinion to carry probative weight? That is necessarily a fact-sensitive question, and on these facts, the Board finds that Mr. Warner did not provide enough support for his valuation opinion.

26. Mr. Warner’s vagueness is particularly troubling given the nature of the property at issue—a large manufacturing facility that by all accounts was worth more than \$3 million. A person valuing a property of the subject property’s size and complexity necessarily must make numerous assumptions and judgments that may greatly affect his ultimate valuation conclusion. Under those circumstances, one would expect something more than Mr. Warner’s two-page “Market Value-in-Use Calculation,” and testimony that simply tracked that document.
27. Mr. Warner’s reconciliation of his comparable properties’ sale prices exemplifies the degree to which mostly unexplained subjective judgments affected his final value conclusion. Mr. Warner testified that he found that the subject property was most similar to sales 1 and 4 from his sales-comparison analysis. There was a large chasm between the per-unit sale prices for those two properties—Sale 1 sold for \$16.50 per square foot while Sale 4 sold for \$25.20 per square foot. Yet Mr. Warner gave almost no weight to Sale 4 in his final reconciliation, settling instead on the exact price-per-square foot from Sale 1. And he did little to explain that decision beyond pointing to the fact that Sale 1 was from the same county as the subject property.
28. Even when specifically questioned, Mr. Warner did little to explain or justify his judgments. For example, when Mr. Clough asked Mr. Warner why he viewed tilt-up-concrete construction as superior to the subject property’s steel-panel construction. Mr. Warner simply asserted that the tilt-up-concrete would have a longer economic life because it would not suffer as much damage from being hit by tow motors. Mr. Warner, however, did not explain whether he based that conclusion on any objective data or simply on his own general knowledge and experience. That difference is important, especially given that, while Mr. Warner testified that he had appraised many commercial



properties, he did not testify to having any particular experience in valuing manufacturing facilities like the subject property.

29. Granted, appraisal reports do not always provide great detail about all of the appraiser's underlying judgments and assumptions. But in those reports, appraisers normally certify that they have complied with USPAP. Thus, the Board can infer that the appraiser used objective data in making his adjustments and other judgments, or if objective data was not available, that the appraiser relied on his education, training and experience. While Mr. Warner testified that he followed standard appraisal practices, he is no longer a licensed or certified appraiser. His assurances therefore are not as persuasive as similar assurances made by someone who is subject to a licensing authority.
30. Also, appraisers typically consider all three generally accepted valuation approaches. An appraiser may decide not to develop one or more of those approaches if, for example, he believes they are unlikely to yield a reliable value estimate. But the appraiser will normally explain his decision. Here, Mr. Warner did not use the income or cost approaches to check his conclusions under his sales-comparison analysis. And he did not say why. The fact that the subject property was owner-occupied may explain foregoing the income approach. But the reasons that might justify foregoing the cost approach are not self evident. Although difficulties in estimating depreciation may render the cost approach less reliable for valuing older facilities, Mr. Warner estimated subject building's effective year of construction as 1997—just 10 years before the valuation date that he used in his analysis.
31. Indeed, Mr. Dewald offered the only explanation for why Mr. Warner used only one valuation approach, testifying that that he had asked Mr. Warner to use the sales-comparison approach because that approach was the most applicable for properties like the subject property. Although one perhaps should not fault Mr. Warner for simply doing what he was asked to do, the lack of any check on his sales-comparison analysis further detracts from the already questionable reliability of his valuation opinion. And given that Mr. DeWald's compensation is contingent on tax savings that might be realized from

reducing the subject property's assessment, his conclusory explanation for limiting Mr. Warner's assignment does little to assuage that concern.

32. In sum, Mr. Warner did not sufficiently explain the data and assumptions underlying his sales-comparison analysis for the Board to give his valuation opinion probative weight. Because the Petitioner relied exclusively on that valuation opinion to rebut the presumption that the subject property's assessment accurately reflected its market value-in-use, the Petitioner failed to meet its burden of proof.

#### **SUMMARY OF FINAL DETERMINATION**

33. The Petitioner failed to rebut the presumption that the subject property's assessment accurately reflected its market value-in-use. The Board therefore finds for the Respondent.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

## **IMPORTANT NOTICE**

### **- 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>>