



CITY OF WAUWATOSA  
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**BOARD OF REVIEW**  
**Tuesday, June 23, 2009 – 8:30 a.m.**

PRESENT: Messrs. Benz and Schilling; Ms. Wakefield -3

ALSO Mr. Miner, Assessor; Mr. Lenski, Deputy Assessor; Ms. Aldana, Asst. City Atty./;  
PRESENT: HR Director; Ms. Ledesma, City Clerk/Board Secretary

Mr. Schilling in the Chair

**10499 Innovation Drive**  
**379-9999-47**

City Clerk Ledesma swore in property owner's representative, Joseph Calvanico of Grant Thornton, 175 W. Jackson Boulevard, Chicago, and Assessor Miner.

The assessed value as of January 1, 2009 was:

Land	\$ 2,625,800
Improvements	20,309,200
Total	\$22,935,000

The total assessed value and estimated fair market value are the same for 2009.

Mr. Calvanico stated the fair market value should be \$14,500,000. While the assessor's office will be asking the Board to look at the cost approach for this property, he will be using more than one. This approach is supported by case law, the assessors' association, and the Wisconsin Assessor Manual.

Mr. Calvanico reviewed in some detail the state of the economy and the resulting state of the hotel hospitality industry; he noted that selling prices for hotels in 2008 decreased 20%. The subject property, the Crowne Plaza, is a new hotel with somewhat poor visibility from the street because of the setback and presence of foliage.

The comparable sales approach to valuation was first examined; this approach includes furniture/fixtures, and equipment and makes appropriate adjustments for differences in the comparable properties with the subject property. Prior to 2007 the market was fairly strong. The

comparable properties identified were: Radisson Hotel, 2303 N. Mayfair Road, Crowne Plaza, 4404 E. Washington, Madison, Comfort Inn, 4822 E. Washington, Madison, Hampton Inn, 2840 Ramada Way, Green Bay, Hospitality Inn, 4400 S. 27th Street, Milwaukee, Courtyard in Milwaukee, and a current listing, Hilton Hotel on the Milwaukee River, Milwaukee. The comparable sales approach suggests a value of \$14,328,000 for the subject property.

The cost approach yields a value of \$15,418,835 for the subject property. It took into account extraordinary costs borne by the subject property (retention pond, change in floodplain, fire department easement, extra parking, etc.), none of which contribute to the overall market value.

The income approach was reviewed next, using both actual and market data on the property. It took into account the average daily vacancy rate, revenue sources, expenses, etc. Mr. Calvanico noted that the weekend vacancy rate for the hotel is quite high as this is a business location. Average occupancy rate in the metro area is about 60%; the subject property is running at 47%. The income approach analysis supports a value of \$13,463,776.

Averaging these three valuation approaches yielded a figure of \$14,400,000; he is requesting the valuation be set at \$14,500,000. The 8.37-acre parcel was purchased for \$2.9 million dollars, though the owner would likely not build in today's economy.

Mr. Benz observed that property values along Mayfair Road run over \$1 million per acre. He also noted that the petitioner's objection form lists an opinion of fair market value of \$13,000,000, not \$14,500,000.

In response to a query by Ms. Wakefield concerning the use of different valuation approaches from year to year, Mr. Calvanico explained that at any point in time, there are one or two approaches that are stronger than another.

Mr. Schilling noted that one of the comparable cited, the Radisson, has a less desirable entrance and parking arrangement than does the subject property. He opined that the subject property's close proximity to the medical complex is a plus. He agreed that this was not a tourist area, however.

Mr. Miner addressed several questions to Mr. Calvanico concerning the comparable properties used. He also reviewed the three-tiered approach to valuation that is prescribed for use by the Wisconsin Assessor Manual. He pointed out that the income and cost approaches are to be used if there are not comparable sales against which to value the subject property. Assessors don't look at one year of income when using the income approach.

Mr. Miner noted that Milwaukee County sold the subject parcel under market value to the developer, stating that the intention of the County may not have been the same as a private investor.

Mr. Miner added that this 198-room upscale hotel, designed with the corporate executive in mind, is surrounded by office buildings, some of them Class A structures. To the east and south

are new buildings. The 2007 construction cost listed on the petitioner's objection form is \$20,515,179; however, reported construction costs are \$22,713,351 (no land value included).

The income approach yielded a value of \$15,679,700 based upon current occupancy; however, a 60-6% occupancy rate would make a considerable difference. Higher end hotels are being affected more by the current economic conditions than are those at the bottom end. The income approach is not keeping up with the cost approach due to the economy.

When valuing the property according to the sales analysis approach in his handout, Mr. Miner stated he tried to identify those with the most similar indicators to those of the subject property. The sales (market) approach suggests a value of \$23,858,540.

The valuation summary based upon the three approaches discussed above supports a valuation of \$22,935,000. Mr. Miner opined that if the owner were to attempt to sell this property, the asking price would not be the suggested fair market price of \$14,500,000.

Responding to Mr. Schilling's question, Mr. Miner stated that the assessed value of \$22,935,000 reflects a lowering of the cost approach and is closely aligned with the market (sales) approach.

Discussion ensued over whether to include or exclude personal property (furniture, fixtures, equipment) the overall valuation. The \$2.3 million dollars worth of personal property is not included in the assessed valuation.

The following exhibits were presented and entered into the record:

- Exhibit 1      Petitioner's Objection Form for Real Property Assessment
- Exhibit 2      Assessor's information packet containing nine exhibits

Testimony was closed. Mr. Benz expressed doubt that the value of the property had fallen from the \$20,515,179 construction cost to \$14,500,000.

Ms. Wakefield stated she was struggling with the market value since none of the most comparable properties sold in 2008. The cost value is what it is. It is acknowledged that less was paid for the property perhaps in part because of extra improvements and costs that the site demanded.

Mr. Schilling noticed that the property owner had indicated three different values for the property on different forms. Different valuation approaches yield different figures. The assessor's approach is more valid, if somewhat subjective. The burden of proof that the assessor's valuation is incorrect was not met by the owner's representative.

It was moved by Mr. Benz, seconded by Mr. Schilling to sustain the assessor's valuation because the tax payer has not provided enough information to rebut the assessor's presumption of correctness. Ayes 2, Noes 1 (Wakefield).

Recess from 11:10 a.m. – 1:30 p.m.

**1400 N. 113th Street  
375-9990-05**

City Clerk Ledesma swore in property owner representative Atty. Kristina Somers, Reinhart Boerner Van Deuren s.c., PO Box 2018, Madison, and Assessor Miner.

The assessed value as of January 1, 2009 was:

Land	\$2,699,900
Improvements	5,500,100
Total	8,200,000

The total assessed value and estimated fair market value are the same for 2009.

Ms. Somers stated the fair market value should be \$6,000,000.

Ms. Somers noted that while State Statutes indicate that the best indicator of value is an arm's length sale of the subject property, no such sale has taken place. A comparable sales approach analysis suggests a value of \$7,302,764. Comparable properties used in the analysis all sold – save one – in 2008: 9725 S. 113th Street, Oak Creek, 1000 W. Donges Bay Road, Thiensville, 5170 S. Sixth Street, Milwaukee (1/09), 10277 Venice Avenue, Sturtevant, and 2003-2201 S. 114th Street, West Allis. No sales prior to 2008 were used since the market was very different then. Adjustments were made for differences between the comparable properties and the subject property. Some of the properties cited have a more favorable land-to-building ratio than does the subject property. Approximately 40% of the approximately 5 acres is used by the building.

An income approach analysis on this property supports a valuation of \$5,800,000 (rounded to \$6,000,000).

The cost approach is the least desirable approach to use for this property because the property is 30 years old.

Mr. Miner stated that appraisers he consulted with indicated that land-to-building ratios may affect potential buyers, but do not necessarily affect value. The subject building has been added on to many times; older buildings tend to have lower land-to-building ratios.

Using the cost approach for this property, a third- tier method in the valuation hierarchy, yielded a value of \$9,155,600.

Market information (\$8.00/s.f. market rent for office, \$3.50/s.f. for warehouse) was used in the income approach. This analysis suggests a value of \$6,738,000.

In using the comparable sales approach, Mr. Miner noted that not many comparables were available. The most recent sales are weighted more. This analysis suggests value of \$8,200,000.

Ms. Somers pointed out that one of the comparable properties (Menomonee Falls) cited by the assessor had an *allocated* value of \$14,200,000 and was part of a total purchase of \$7.1 billion dollars. She contended that a September 2008 Court of Appeals decision rejected this manner of valuation as it is not a good indicator of value. Likewise the Menomonee Falls property on the assessor's comparables' list should not be relied upon when valuing the subject property.

Ms. Somers summarized that the best indicator of value are the five comparable sales presented. Sales before 2008 are less reliable. Two of the three sales the assessor relied on occurred in 2007, and another was part of a \$7.1 billion dollar transaction. Therefore, an adjusted valuation of between \$6 million and \$7.3 million is sought.

Mr. Miner countered that an income approach should not be used if comparable sales are available for analysis. He noted that the petitioner's adjustments on the comparable properties were performed by an attorney, not an appraiser or assessor. The assessor's comparable properties are most similar to the subject property and the data suggests a square-foot value closer to \$50/s.f., rather than the \$38/s.f. proposed by the petitioner. This translates to a value of \$8.2 million dollars using the comparable sales approach.

In addressing the inclusion/exclusion of the Menomonee Falls property, Mr. Miner stated that if it were excluded from consideration, the next most comparable sale would be the property in West Allis on S. 114th Street.

The following exhibits were presented and entered into the record:

- Exhibit 1      Petitioner's Objection Form for Real Property Assessment
- Exhibit 2      Petitioner's market value comparisons
- Exhibit 3      Petitioner's income analysis
- Exhibit 4      Petitioner's sale profile of the US Food Service warehouse in Menomonee Falls
- Exhibit 5      Petitioner's Court of Appeals case #2007AP2523
- Exhibit 6      Assessor's information packet containing nine exhibits

Testimony was closed. Mr. Benz opined that this building was overbuilt for the size of the property, which may translate into a lack of parking for trailers thereon. He felt the Sturtevant comparable sale cited by both parties was too far away to be considered relevant.

Ms. Wakefield expressed concern that some of the assessor's comparables were sales that occurred prior to 2008 (though they are identified on the comparable sales chart as being less reliable); she felt the petitioner's comparable sales were more relevant.

Mr. Schilling stated he felt the taxpayer submitted sufficient information supporting the contention that the assessor's value is incorrect.

It was moved by Ms. Wakefield, seconded by Mr. Benz that the assessor's presumption of correctness has been rebutted and the new total value on the subject property should be \$7.3 million dollars. -3

**10200 Innovation Drive  
379-9999-35**

City Clerk Ledesma swore in property owner representative David Domres, Irgens Development Partners LLC, 10700 Research Drive, and Assessor Miner.

Mr. Benz disclosed that some time during the last ten years he had an independent contractor agreement with Irgens Development. He did not feel that this agreement would affect his judgment in this matter, however.

The assessed value as of January 1, 2009:

Land	\$1,685,400
Improvements	7,190,200
Total	8,875,600

The total assessed value and estimated fair market value are the same for 2009.

The following exhibits were presented and entered into the record:

- Exhibit 1 Taxpayer's Objection Form for Real Property Assessment
- Exhibit 2 Assessor's packet containing nine exhibits

Mr. Domres stated that their valuation is based upon actual income and expenses for this property. It has experienced a 20% vacancy rate, thereby creating lower anticipated income. He stated the January 1, 2009 assessed value should be \$7,836,706. This figure reflects the value given the current market conditions. Two other sales have occurred in the Research Park and both were purchased with financing. United Health Care was a purchaser and their cost of capital is lower than usual.

Mr. Domres added that the subject property is a Class B type building; it is a single story, with a modest finish and lower ceilings. About 10,000 square feet of the 69,500 square feet is warehouse space. The warehouse space has been vacant almost one year.

Mr. Miner reviewed the contents of his data packet. A cost approach analysis of the property suggests a total valuation of \$9,969,700. The assessor's office has been unsuccessful in obtaining construction cost information on the building which was constructed in 1999. The initial assessment made after completion of the construction, therefore, was likely based on the analysis provided by the CLT (commercial valuation program) system.

The income approach analysis supports a valuation of \$7.9 million dollars, which is very close to the petitioner's option of value (\$7.8 million). The assessor's office did acknowledge the vacancy issue when making its analysis, but one year of decreased occupancy is not sufficient reason for a lower assessment. The income and cost approaches should not be relied on, however, if there are comparable sales available, or if the subject property is sold, as they are considered third tier approaches.

The comparable sales approach is the preferred analysis method to use when such data is available. This approach supports a value of \$8,875,600 and is based upon relevant sales of similar properties. The most reliable indicators of value of this property were based upon information gathered on the sale of properties at 10400 W. Innovation Drive and 10701 Research Drive in Wauwatosa, and at 20900 W. Swenson Drive in the Town of Brookfield.

Testimony was closed. Mr. Benz stated he did not feel the comparable properties cited by the Assessor's office were very comparable at all.

Ms. Wakefield stated she felt the current assessment should be upheld, though the vacancy issue is unfortunate.

Mr. Schilling opined that the assessor's office used the best information available to it when valuing the property. Both the market value and income value approaches were considered. The taxpayer used only the income approach, and not enough evidence was provided to refute the presumption of correctness.

It was moved by Ms. Wakefield, seconded by Mr. Schilling  
to sustain the assessor's valuation. Ayes 2, Noes 1 (Benz)

**2578 Wauwatosa Avenue  
331-0792-00**

City Clerk Ledesma swore in property owner Ronald Collison ("Mr. Collison"), his son, Matthew Collison ("Mr. M. Collison"), and Assessor Miner.

The assessed value as of January 1, 2009:

Land	\$35,300
Improvements	43,200
Total	78,500

The total assessed value and estimated fair market value are the same for 2009.

Mr. Collison stated that the property has no intrinsic value. He has a property in similar condition in the City of Milwaukee and it has been assessed at \$100. If he is required to attach a value to this property, it should also be \$100. Mr. Collison stated he is challenging the legality in state statute 70.47 (8)(i) concerning the assessor's presumption of correctness.

Mr. Collison argued that the assessment was based on the assumption that the property is uncontaminated because he has declined to have a Phase 2 environmental site assessment performed thereon. (A Phase 1 environmental site assessment seeks to answer the question, "Is there reason to suspect the property is contaminated?" A Phase 2 environmental site assessment is performed when a Phase 1 study concludes there is reason to suspect that a property is contaminated, and involves soil and/or groundwater sampling and analysis.)

Mr. Collison contended that the assessor cannot make the assumption without a Phase 2 study that the property is *not* contaminated. Therefore, the presumption of correctness is not valid. He further stated that 70.32(1)(m) of the statutes states that an assessor must take into consideration the contamination on any property when assessing that property.

In response to a query about the presence of contamination, Mr. Collison stated that proof the Board is looking for is not something the owner of a property is willing to provide. If the owner provides evidence of contamination, he becomes subject to DNR regulations. The DNR can come in, close a business, assume control of the property, remediate the contamination, and force the owner to pay for this work.

Mr. Collison did share that when he purchased the property in 1974, the former owner told him that he had used dry cleaning solvent to kill weeds, and had had some spills in the basement. Dry cleaning solvent is a hazardous substance. When exposed to a gas flame, it turns into hydrochloric acid. Mr. Collison noted that he has witnessed a product spill since he purchased the property. An overflow tank was located in the basement, situated on a concrete floor. The floor has deteriorated to the point where it absorbs water. There have been perchloroethylene spills from a 55-gallon drum. There are no underground tanks on the property, though. Mr. Collison observed that a property owner must inform prospective buyers of adverse conditions; however, once so informed, no one wants to buy the property.

Mr. Collison also stated that assessors must assess property on an ad valorem basis, that is, what someone is willing to purchase the property for. He challenged the Phase 2 policy that Milwaukee and Wauwatosa are using, and the legality of the assessment method used. It does not give him due process and does not guarantee his 14th Amendment right of equal protection under the law. He contended that in order for him to protest the assessment on his property as other property owners can, he must produce a Phase 2 study (estimated cost \$10-70,000), and face remediation costs (estimated \$100,000 – 1 million dollars). The *Journal of Property Tax Management* is the source of these estimates.

Mr. Collison reiterated that the assessor cannot assume there is no contamination on the property simply because testing has not been done. There is opinion evidence available. He explained that he was unwilling to contest his assessment for many years because of the environmental laws that went into effect in the 1980's.

In response to Mr. Schilling's query, Mr. Collison stated he has not had the property appraised, though he did list it for sale. But if a broker is informed of the condition of the property, it is not right to sell it to someone else.

Mr. Collison referred to affidavits from Christina Fohr and Daniel Belair in his informational packet. Ms. Fohr had been interested in purchasing the subject property until learning about potential contamination. Mr. Belair sold Mr. Collison his property in Milwaukee in 1979; Mr. Belair was aware of possible contamination on the Milwaukee property. The assessment on this property was subsequently reduced to \$100 by the City of Milwaukee, even though a Phase 2 study was not performed.

Mr. Collision stated that he cannot borrow money to repair the subject property, so it is just deteriorating. Contaminated properties represent a loss in tax revenue for municipalities.

Mr. Schilling urged Mr. Collision to present information relative to the value of the property; little has been submitted.

Mr. Collision reiterated that market value of property is what someone is willing to pay. If a property cannot be sold because of contamination, it has no value.

The following exhibits were presented and entered into the record:

- Exhibit 1      Petitioner's Objection Form for Real Property Assessment and bound documents attached
- Exhibit 2      Photographs of the basement of the subject property

Mr. Schilling cautioned that some of the material presented in the bound document is hearsay since the authors of the letters are not present for questioning.

Ms. Aldana stated that she would not be advising the Board on this case; during this hearing, she realized she had a very brief conversation with Mr. Miner some months earlier about the property.

Mr. Benz stated that while he has never had a conversation with Messrs. Miner and Lenski from the assessor's office, he was asked some years ago to list the subject property. He declined to do so because of its condition. At that point the dry cleaning business had been shut down for 4-5 years; however, the smell of perchloroethylene was very strong. Mr. Benz's family had operated a cleaning establishment for many years, so he was well acquainted with the odor.

(Recess to obtain another city attorney for the Board's counsel.)

City Attorney Alan Kesner was called into the meeting. Mr. Kesner stated he did not believe there was a conflict of interest present by Mr. Benz serving on the Board. Mr. Miner stated that he had no objections.

Mr. Collision recalled that former assessor Kathleen Isleb acknowledged the presence of a problem with his property some years ago; this resulted in a 25% reduction in its value.

Mr. M. Collision verified that he himself had spilled some perchloroethylene in the building.

Mr. Benz suggested that this hearing must focus on value, not the presence of contamination. The value has been set at \$78,500 and the Board must determine whether that is appropriate.

Mr. Miner began his presentation by reviewing the conditions under which assessors must value property. Wisconsin Statutes 70.32 refers to the market value standard. The Markarian hierarchy is the standard against which assessors are to value property. Additionally, Chapter 8 of the *Wisconsin Property Assessment Manual* notes that if a property owner believes the

property to be contaminated, evidence should be given to the assessor. Mr. Miner referenced the Phase 2 study, noting that professionals in the assessment field consider this document appropriate to use in establishing value. Mr. Miner acknowledged that he is not an expert in the field of property contamination; however, there are firms that can provide contamination information. They would like to know the extent of the problems affecting the subject property and adjust for them based upon this information.

The 2008 assessment for this property was \$145,300. Following a May inspection by Mr. Miner and Mr. Tuff, also of the assessor's office, this figure was reduced to \$78,500. This reduction was not made because of contamination, however. In every other instance where Mr. Miner has dealt with property contamination in the valuation process, he has been able to consult with the individuals performing the testing.

Mr. Miner reviewed the approaches used to value the property. The CLT Univers System software was used in determining value using the cost approach; after the visual inspection, the property's condition was downgraded and functional obsolescence was taken into account. Floors need repairs. Walls are missing. The property has been neglected for years and is vacant. It is an old building and is 90% depreciated. Just looking at the structure, Mr. Miner stated he could not see evidence (supporting the contamination contention), though he also did not know what he ought to be looking for. No odd smell was detected on the premises.

The income approach analysis is used for all commercial properties. A cap rate of 11% was used for the subject property, reflecting the property's condition and potential for contamination. A value of \$72,000 was determined using this approach.

The comparable sales approach is least suited to this property, as there are no good sales of comparable mixed-use properties against which to compare. The assessment is at \$19 per square foot. By contrast, those properties most similar in terms of size, square footage, mixed uses, etc., had assessments ranging from \$67 - \$117 per square foot.

Mr. Miner stated that until he has quantifiable evidence supporting the presence of contamination, he would not favor reducing the assessed value to \$100. The current assessed value reflects what staff knows for certain about the property. While the property owner has submitted considerable paperwork, an adjustment cannot be made based upon someone else's word, or the owner's opinion.

Mr. Collison questioned how a Phase 2 study that only demonstrates *the presence* (not extent) of contamination could assist in property valuation.

5:00 p.m. RECESS until 10:30 a.m. on Wednesday, June 24, 2009.

Carla A. Ledesma, Board Secretary

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