

Adjourned Board of Review – July 20, 2009 (Corrected)

The following media were noticed relative to this meeting per the Open Meetings Law of the State of Wisconsin: The Ozaukee Press, Port Washington, WI; The Milwaukee Journal-Sentinel (Ozaukee-Washington Desk), Milwaukee, WI; The Sheboygan Press, Sheboygan, WI. In addition, a copy of the agenda was also posted at the following locations within the Village of Belgium: Belgium Village Hall, Belgium Post Office, Port Washington State Bank (Belgium Office), Harris Bank (Belgium Office), and Belgium Hardware and Beverage. A notice was also posted front door of the Belgium Village Hall.

Call to Order, Roll Call:

The adjourned Board of Review was called to order at 7:06 p.m. by Kevin K. Kowalkowski. In attendance were John W. Thiele, Ronald W. Weyker, Jeffery R. Ritter, Clemens K. Gottsacker, and Village Clerk-Treasurer Lila M. Mueller. A quorum was declared established. Also in attendance were Village Attorney Gerald H. Antoine, Assessors Donald G. Peters and James Ronski, Carol Pomeday – The Ozaukee Press, Atty. William R. Steinmetz, Nancy Eiseman.

Establishment of a Quorum:

A quorum was declared established.

Approval of Minutes of June 23, 2009:

A motion was made by Clem Gottsacker and seconded by Jeffery Ritter to approve the minutes of June 23, 2009. The Board of Review was polled: ayes – Weyker, Kowalkowski, Ritter, Gottsacker, Mueller; noes – none; abstain – Thiele. Motion carried.

Board of Review Hearing for CDG Belgium Grocery, LLC:

John Thiele excused himself as he has set precedence from past meetings.

In a letter dated June 24, 2009, Atty. William R. Steinmetz requested the removal of Tom Vodicka from the Board of Review for the Hearing of CDG Belgium Grocery, LLC, Objection. Per Atty. Antoine, that is their right to request one Board of Review member not to participate.

- Objection #1-09 – Tax Key No.: 18-023-10-003.00 – CDG Belgium Grocery, LLC Clerk-Treasurer Mueller read off information from the Objection Forms for Real Property Assessment submitted by Bill Eiseman on 4/15/09. Atty. Steinmetz had presented some updated information which had been forwarded to the Assessors by Clerk-Treasurer Mueller.

Clerk-Treasurer Mueller swore in the Assessors Donald G. Peters, James Ronski, and Nancy Eiseman.

Tim Warner, MAI, SRA (Wisconsin Certified and Licensed General Appraisal 227-010) of Wisconsin Appraisal Services, LLC testified relative to A Summary Appraisal Report of the Belgium Village Market, dated November 17, 2008 (Objector's Exhibit #1). Mr. Warner took part in this hearing via telephone. Clerk-Treasurer Mueller swore in Tim Warner. Mr. Warner stated his background and qualifications. He noted that the Summary Appraisal was requested by Harris Bank. Mr. Warner described the scope and values within the appraisal. The conclusion of value of the supermarket improved property was \$1,040,000.00 and the excess land was valued at \$710,000.00 under the definition of Market Value. The appraisal report took place after the closing of the grocery store that closed early November, 2008. He was looking at a vacant supermarket. He looked at the Cost, Market and Income Approaches with primary weight to the Sales Comparison Approach comparing it to other vacant supermarkets. The Income Approach looked at the market rent and it was not leased as reported to us. He valued it according to current rent levels and current capitalization rates in the market. The Sales Comparison Approach valued the property at \$1,040,000.00. The income Capitalization Approach was valued at \$1,060,000.00. Mr. Warner indicated that the Sales Comparison Approach was the best approach with a value of \$1,040,00.00.

The vacant land had the Sales Comparison Approach used primarily with sales of other vacant land sales within the area. The comparable Town of West Bend,

Richfield and the two sales in Grafton. A value of \$710,000.00 was established for the excess land.

The value as of January 1, 2009 was questioned. The Financial melt down impact is being felt now. Mr. Warner indicated that the value is not much different now than when his appraisal was done.

James Ronski needed clarification of Mr. Warner's opinion of market value for the improved parcels (2 acres with the store) which was \$1,040,000.00 and his opinion of value on the excess land was \$710,000.00. Within Mr. Warner's report he considered the excess land completely unimproved. Mr. Ronski indicated that the excess land was rough graded and paved. This site was to be developed with an anchor tendency with other tenancies to the south. Mr Ronski needed clarification is that his opinion of market value \$1,750,000.00 combined. The objection is for \$1,200,000.00 based on this report. Ronski noted that he was confused. The report says that the building and the property is worth at least \$1,710,000.00 and the objection is \$1,200,000.00. Mr. Warner responded saying that the property is worth \$1,750,000.00.

Mr. Ronski presented Assessor's Exhibit #1 which his testimony was based off of. Opinions will differ.

- “ 1.) The land was acquired on 9/18/06 for \$450,000.00.
- 2.) Actual cost of site work totaled \$760,813.47.
- 3.) Actual cost of grocery building \$1,547,356.73.
- 4.) Total cost to construct \$2,758,170.20.
- 5.) These actual costs were NOT provided to the assessor prior to the 2008 assessment being levied.
- 6.) The 2008 assessment included the land, the site improvements, and the grocery building. The 2008 assessment was \$2,495,000. The assessment was levied using the cost approach to value. It resulted in an estimate 11% lower (or \$263,170) than the actual costs.
- 7.) The project was made possible by a loan from Ozaukee Bank.
- 8.) The loan was supported by a prospective appraisal prepared by Dennis Russell Appraisal. Services which estimated the phase 1 value of the property as follows: all land at \$1,700,000.00 and the grocery building at \$1,939,072.00. The total estimate of these two components was \$3,639,072.00.
- 9.) The prospective appraisal was NOT provided to the assessor prior to the 2008 assessment being levied.
- 10.) The assessment estimate of value was 46% lower (or \$1,144,072) than the prospective appraisal.
- 11.) Despite the fact that the owners had not provided actual costs, had not provided the prospective appraisal, had not provided an estimate of site work damages and were fully aware that all these withheld documents indicated that the assessment was low they appealed their 2008 assessment to the Board of Review. They were unsuccessful.
- 12.) The owners next filed a claim of excessive assessment in January of 2009. The Village Board disallowed the claim in April of 2009.
- 13.) In the interim, the grocery; owned and operated by the owners of the real estate, failed and the property became 100% vacant.
- 14.) The owners did NOT request a review of their 2009 assessment. Because the property was still almost brand new and the owners had not provided any of the information previously requested or any new information the assessment remained unchanged for 2009. It remained at \$2,495,000.00.
- 15.) The owners filed an objection to the 2009 assessment. They believe that the property is currently worth only \$1,200,000.00. They believe that the property has lost 56% of its actual costs in a little over a year.
- 16.) They offered it to the Belgium school district in late 2008 for \$3,000,000.
- 17.) According to their objection form they currently have it on the market for \$2,480,000.”

Mr. Ronski used the Cost Approach to Value with this property as it was brand new and still feels that it is appropriate for consideration today. There is a reason that appraisers consider all three approaches to value. If one set of valuations is marketedly different from others. All the assessors agree that the highest and best use of this site is as it is developed. The Cost Approach definition from the

Dictionary of Real Estate was stated. This property fits both of the definitions whereby it is new and fits the best use and it is somewhat unique that it is designed to be more than a store; it was designed to be an anchor. Due to the age of the property, Mr. Ronski's opinion is that the Cost Approach is still the best method.

Mr. Warner was questioned if he agreed with the Cost Approach method. In the last fifteen months, Mr. Warner has seen properties on the market in retail developments. All of them are significantly less than the cost to construct. That is Mr. Warner's opinion of value as the property has not sold. Mr. Warner was referencing multi-tenant retail buildings.

Mr. Ronski stated that a small portion of the improvements have not been valued by the appraisal. 9.3 acres as excess land but doesn't take into account the improvements on developed on the acreage. The legal description and the amount of the land is correct. The appraisal has the wrong key number and the wrong assessment for the subject property. These errors do not affect Mr. Warner's opinion. Our first disagreement comes in with the Cost Approach. Super adequacy was explained. The façade of a building (i.e. Japanese restaurant), fixtures, etc. – items with too great of a cost for the value. It is considered too great of a use for the property. When you use replacement cost as current value and you get rid of all of the super adequacy. It makes no sense to use this when a building is brand new. When Mr. Warner switched over to replacement cost we lost a lot of stuff – multiple store fronts, architectural fees, the height of the building – a lot of elements not considered under replacement cost.

Mr. Warner noted that no bank would lend under reproductive costs. They are interested in what the property would sell for if they had to take it back and are not interested in reproducing the property. Reproduction costs are very hard to come up with. He always uses Replacement Cost method.

Mr. Ronski noted that the approach seemed to have overlooked the visibility. He stated that he thought that the comparables were fringe comparables. Every comparable is inferior to the subject in every regard. The only place he finds any of these comparables not inferior to the subject is with low visibility. Further differences were stated. All comparable were very standard construction in all features. Sale #2 drives the whole thing down and should have not included.

Mr. Warner indicated that there is not a lot of market demand for properties in this size range. There is not uniform demand for this type of property. Mr. Warner stated that these were the in best arm length sales. They were involved in the original transaction so they are aware of the details of the buyer and seller's motivation. No two properties are identical.

Mr. Ronski agreed with the overall rate of return. The methodically employed is right on. Mr. Ronski reviewed the Comparable Rentals (see attached) and wanted to make a point that some of these properties were out of the metro Milwaukee area. A pattern of rentals are out there. The date of commencement of lease was not noted. Mr. Ronski noted that almost all food stores have income participation. They have a base rent and the tenant pays for everything including an income participation. Mr. Warner noted that the chart was base rental. Mr. Ronski noted that the current owner's rate was at \$9.00/square foot. \$9.00/square foot does not seem out of line.

Further explanation of what Capitalization Rates were was given to the members of the Board of Review. Overall Capitalization Rate (OAR) Analysis was reviewed (see attached). The properties that were submitted indicated that their overall Capitalization Rate were stable. The latest date of sale was in 2008. The highest Capitalization Rate for 2008 was 8.48%. Using that rate for the \$1,640,000 of improved portion, it came up at \$600,000 higher than the appraisal. Together with the excess land of \$710,000, the combined total of \$2,350,000 does not provide a reasonable number for the site improvements on the excess land.

Mr. Ronski has to differ in what cost approach has been used. He thinks that the comparable sales could have been adjusted differently and the income approach in terms of methodology but the data collected was wonderful. Ronski indicated that Warner had some wonderful data to build a decision on but varied too much from the data collected.

Mr. Warner disagrees with the assessor relative to cost approach. Replacement costs, within the documentation were used. What the property sells for and what the original costs were is depreciation. *Mr. Warner* felt that the original construction costs, not reproduction cost should be used. No bank *Mr. Warner* that he does business with would accept reproduction costs over replacement costs. Secondary, regarding the lease terms, he had no knowledge, input or data regarding relative what included in the lease agreement. This building is vacant and available. Leased Fee Value and Fee Simple Value were noted. Fee Simple Value always requires the use of market level rent. The lease was not in force at this time. Mr. Ronski noted that he did not use the lease, per se, but did think the \$9.00/sq. foot developed from an examination of the internal lease fit Warner's data perfectly. Mr. Warner doesn't see it that way due to the retail market at the valuation date.

Atty. Bill Steinmetz noted that the Assessor used a Cap Rate of 8.48% and Mr. Warner used the Cap Rate of 10%. He questioned Mr. Warner on the rate he used. Warner noted that the problem is establishing cap rates in the market. Cap Rates have gone up in Mr. Warner's opinion. Mr. Ronski noted that, as an assessor, they are not able to consider data, activity or rates after the first of the year. Mr. Warner is in agreement with Mr. Ronski's last statement.

Atty. Antoine noted that members of the Board of Review may now question Mr. Warner. Jeffery Ritter had a question about the amount that would be deducted relative to location and economy. Mr. Warner, who would not speak for the assessor, indicated that in the retail and office sectors, the economy and employment has the major impact. All third party sources indicate that there is a negative absorption meaning that the tenants are shrinking the market place. *Mr. Ritter* asked what type of loan they would get for this. *Banks have essentially done three things from November, 2008 to July of 2009 Loan as Value Ratio has dropped to 60-70% from 80%. Income being produced by property has had a lowered debt coverage ratio to what they would loan. Debt coverage ratio wouldn't be considered as they are not producing income. Banks are looking much more at the contracts due to vacancy rates.*

Contact was lost with Mr. Warner via teleconference. Contact was again established.

Lila Mueller questioned Mr. Warner relative to the fact that this appraisal was performed after the store had closed and what potential changes would be different if the store was still in operation. They would have looked at the lease to see if is at arm's length or not. Value would have been substantially higher. Buyers in the market do not like vacant space as they do not know when the market will turn around. There is a big difference in this current market with negative connotations.

Clem Gottsacker questioned Mr. Warner relative to the appraisal amount of \$1,750,000 for the building, lot and vacant land. CDG-Belgium Grocery stated to lower the assessment as indicated on the Objection Form to \$1,200,000.

Kevin Kowalkowski questioned Mr. Warner relative to the Village's assessors using reproduction costs and Warner's prefers using replacement costs. The appraisal schools teach using replacement costs. The difference between reproduction cost and replacement cost is that replacement cost is current techniques and materials, i.e. stone or brick building – masonry bearing walls. Today a steel frame or concrete frame is engineered for the support of the building. *Mr. Warner* claims that the assessor is using actual cost rather than reproduction costs. Mr. Ronski rebutted that statement saying that you use actual costs on a brand new building and not seek replacement costs. This building someone could very easily

reconstruct this exact building as it is brand new. Actual costs exist currently. No changes in construction materials have taken place. Mr. Warner noted what our assessor is telling us is correct. In the market buyers and sellers are valuating the building as it sits now and if they can buy competing properties for the rental market for property today. Mr. Warner noted what the bank was looking for. Two different methodologies exist – the real estate agent who is overstating the price and the buyer who is understating the price. Mr. Ronski indicated that they agree that this is being appraised as a single tenant building. Kevin Kowalkowski noted that this does not take into consideration the economic times we're trying to sell it in. That is a correct statement. Mr. Ronski indicated that the appraisal should have a different appearance and should have a cost more similar to the actual cost of the structure with depreciation attached to it economic obsolesces, etc. Mr. Ronski did not use all the tools that were used by Mr. Warner. Replacement cost was used. Warner was looking for what it would sell for in the market place today. Jeffery Ritter questioned the use of the sales comparison approach. Mr. Warner noted that it will probably be the trend and this is what is happening in the marketplace. What keeps you in business over the years is how good you are with the market value in the long run.

Kevin Kowalkowski questioned the comparative Capitalization Rate for properties. Several were not in the same geographical area and there are not many comparables. Warner indicated that he gave the best data available.

Mr. Ronski rebutted the data presented by Mr. Warner as he always went low side. Mr. Warner noted that is what the market is doing – looking at the lower side of the rates.

Clem Gottsacker reviewed what he understood the overview of this appraisal. Mr. Warner was questioned on the possible selling price. He could not tell anyone what Eiseman should do. The bank will have something to say about this.

Kevin Kowalkowski questioned if the Eisemans or their representatives at all influenced their decision for your appraisal. Mr. Warner said no and that he was doing the appraisal for Harris Bank. He has a client relationship with the bank as well as a written release. Warner had to also get a release to talk with us tonight.

Jeffery Ritter asked if Mr. Warner appraised residential houses. Mr. Warner does not appraise single family houses. Warner indicated what is happening in the appraising industry relative to single family housing observations.

Ronald Weyker questioned if the improvements were included in the additional lands. Mr. Warner noted that he only included the rough grading and indicated that the improvements were available.

9:20 p.m. – Testimony: Nancy Eiseman, the owner's representative, who has been sworn in, is being asked questions by Atty. Steinmetz. The owner has taken the position that the value of the property as of January 1, 2009 is \$1,200,000.00. A very competent Appraiser had already testified. Eiseman noted Castle Realty is in the real estate market and are in eleven (11) different states with eleven different markets, of which all are doing poorly. Location is important. She would like to see the Cap Rates at 8 or 9 that way she makes money. She tried to get \$7.50/square foot but was only able to get \$6.00/square foot with no takers. Based on a 10 Cap Rate at \$6.00/sq.ft., \$120,000 per year would be arrived on a \$1.2 million dollar building. This is the only developed building in the immediate area. Nothing else has developed around it. The grocery store was an anchor that failed. It is very difficult to get any other retailer here. Population growth has stunted. No land pressure or incentives exists. The Village is beautiful and has a small town look. The building was built to the historical background of the community. Colder's building in Grafton has similar architectural reference to the German heritage. Eiseman claims they cannot get anyone to come to Belgium because the anchor failed. The building costs a lot of money to maintain and it is a shell. The rest of the land is rough graded and blacktopped but no curbs exist. We as landowners have a building in 11.36 acres of farmland.

Clem Gottsacker questioned if it could be subdivided and sold. Due to no support, the anchor failed.

Kevin Kowalkowski questioned Mr. Ronski about what Mrs. Eiseman stated. Mr. Ronski questioned did the real estate fail or did the management of the business fail? That is always the question. He indicated that he knows nothing about their business. It is very difficult for him to say that the real estate failed. It was designed for a specific purpose. Mr. Ronski noted his assessment experience in Germantown, WI and the changing of the grocery chains there. He appraised the building as he saw in on January 1, 2009. He did not differ much from the appraiser.

Cost of the building and the cost of the excavation are put together. Further discussion took place.

Jeffery Ritter stated that the attorney last year was not well prepared. The news media reporting and tracking people who shopped at the grocery store was taken personally.

Assessor Donald Peters asked what it was on the market for right now. Right now it is not listed. It is not listed or advertised. They had it on the market last January. Report was given that on the School Board members that the store was worth \$3 million. Eiseman claims that she had not had any public meeting relative to this and indicated she spoke with Peanuts Schommer about this as a last ditch effort. When asked if they have had a written offer for \$3 million, Eiseman responded no.

The Appraisal was admitted as evidence as Objector's Exhibit #1.

Mr. Ronski reported that the same assessment was carried over from 2008 to 2009.

A letter dated April 17, 2009, from Atty. Steinmetz (Objection #1-09) was discussed. The Clerk-Treasurer forwarded this mailing received it on April 20, 2009 to the Assessor. As no change took place so no notice was sent by the Assessor to the property owner.

Atty. Steinmetz question Mr. Ronski if reevaluated anything relative to this property. Ronski indicated no.

Attorney asked if anyone had anymore testimony.

Summaries – Atty. Steinmetz: We were to determine fair and convincing evidence about the fair market value of the property. We presented a MIA Appraisal dated within 45 days of January 1, 2009. It says the value is in round numbers \$1,750,000.00. We have had evidence from the owner's representative that they have tried to rent this property in its vacant state and based on the market rates they cannot get at a Capitalization Rate of 10% they believe the value of the building is \$1,200,000.00. The assessor, in Atty. Steinmetz's characterization, has done nothing now to determine if their has been any change in the value of property between January 1, 2008 and January 1, 2009 and has left the value as it was the year before. It does not take rocket science for this board that things have change dramatically between January 1, 2008 and 2009. The store failed. It was an operating store January 1, 2008 and is a vacant building in 2009. The economy has tanked as attested by our appraiser. Even the assessor does not disagree with that. As of January 1, 2009 there should have been a reduced assessment for this property and there wasn't. We are asking the board to meet their responsibilities and determine what the assessed value should be.

Mr. Ronski: Partially what the taxpayer has said is partially correct. We haven't done anything to up-grade the assessment. Ronski noted, under oath, that if he had been presented the appraisal prior to the hearing he would have considered a lot of things at looking at that appraisal. And looking at the rate selected, he

thought it was way too low. He thought that the Cap Rate that was used did not come from the market. All these things that supposed happened by January 1st. Ronski used the Capitalization Rates from the end of 2008. He developed an income approach using the same criteria and rationale that the appraiser did but used an actual extracted Cap Rate at a higher level for an opinion of value January 1st. That was not done ahead of tonight's meeting.

Kevin Kowalkowski indicated that the testimony is now closed and that he would like to lead the board in discussion. Jeffery Ritter questioned how the voting process works as well as assessment changes. Atty. Antoine explained the process. The initial assessment was performed prior to the extreme downturn as it exists today. Kowalkowski feels the assessors should have, due to the economy, decreased the assessment. Atty. Antoine noted that the Board of Review's job is to set the assessment as they want it to be. Ronald Weyker expounded on the discussion. Kevin Kowalkowski thought we should not throw out \$1,200,000.00. Clem Gottsacker stated that you don't assess a business on its' success you assess it on the actual value of the property. What would a buyer pay a seller? Discussion took place. There is a presumption in the law that the assessor's value is correct. Kevin Kowalkowski arrived at an average of \$1,815,000.00. Lila Mueller indicated that the \$1.2 million is way too low. Mrs. Eiseman had not produced any hard evidence of sales contract or supporting documents. The only documentation provided was the Summary Appraisal prepared for Harris Bank. Various numbers were discussed. Mueller noted that this appraisal was a bank appraisal, not a real estate appraisal. The bank appraisal will be lower than the real estate appraisal.

A motion was made by Jeffery Ritter and seconded by Kevin Kowalkowski that exercising this judgment discretion pursuant to Section 70.49 (9)(a) WI Statutes – Board of Review by majority roll call will hereby determines that the valuation is incorrect, that the tax payer has presented sufficient evidence to rebuts the presumption of correctness that the tax payer has presented sufficient evidence to review the presumption of correctness valuation is reasonable in light of the relevant evidence. Amount to be set is \$1,950,000.00 for improvement value on July 20, 2009. The Board of Review was polled: ayes – Ritter, Kowalkowski; noes – Gottsacker, Weyker, Mueller, abstain – none. Motion failed.

A motion was made by Clem Gottsacker and seconded by Lila Mueller that exercising this judgment and discretion pursuant to Section 70.49 (9)(a) WI Statutes – Board of Review that the assessor's valuation is incorrect, that the tax payer has presented sufficient evidence to rebuts the presumption of correctness granted by to the assessor. The taxpayer valuation in light of their relevant evident be moved to set the new assessment at \$2,100,000.00. The Board of Review was polled: ayes – Gottsacker, Weyker, Mueller; noes – Kowalkowski, Ritter; abstain – none. Motion carried.

The land assessment remains at \$448,700 (land), \$1,631,300 (~~\$1,651,300~~) (improvement) (~~corrected total; addition error~~).

Any other hearings:

None

Adjourn:

A motion was made by Jeffery Ritter and seconded by Clem Gottsacker to adjourn at 10:02 p.m. The Board of Review was polled: ayes – Kowalkowski, Weyker, Ritter, Gottsacker, and Mueller. Motion carried.

Respectfully submitted,

Lila M. Mueller, CMC
Village Clerk-Treasurer

