Special-purpose properties present some unique valuation challenges. For property tax assessments, in condemnation proceedings and even in mortgage lending, debates regarding the proper basis of a value opinion are common. A special-purpose property is, “A property with a unique physical design, special construction materials, or a layout that particularly adapts its utility to the use for which it was built.” Schools, churches and clubhouses are commonly thought of as special purpose properties, but the above definition is broad enough to potentially include even retail, office or industrial properties that have design features specific to a particular tenant.

In a presentation at the 2017 International Valuation Conference Valuation Beyond Borders in Ottawa, Canada, the attendees were presented a hypothetical case study involving a recently constructed Porsche dealership. The actual cost of land and improvements was $4,000,000, including an appropriate developer fee. The property is well designed and sales volumes are more than adequate to justify the $4,000,000 price. However, because the building has many brand-specific specialties, a dealer of any other brand would pay no more than $3,200,000 for it. The attendees were asked to provide written responses to the following four questions:

1. What is the appropriate fee simple market value for mortgage loan underwriting?
2. What is the appropriate fee simple market value to establish assessed value for ad valorem taxes?
3. What is the appropriate fee simple market value to establish just compensation for a taking in eminent domain?
4. If the dealership is sold as a going concern, what is the appropriate purchase price allocation to the real property (IRS)?

There were over 100 attendees at the presentation, most of whom were seasoned appraisers with many years of experience. When the responses were collected, about 60% of the group indicated the appropriate fee simple market value for mortgage loan underwriting and ad valorem taxation was $3,200,000. The other 40% believed $4,000,000 to be the correct amount. For eminent domain, the proportions roughly switched, with about 60% indicating $4,000,000 to be the appropriate fee simple market value and about 40% indicating $3,200,000. For the purchase price allocation, the responses were almost evenly split. The poll was informal and certainly not scientific. Nevertheless, it did clearly illustrate the disagreements and confusion that are prevalent regarding this issue. Not only did fee simple market value mean different things to different appraisers, in some cases the interpretation was situational and depended on the intended use of the assignment.

THE SOLUTION – VALUE IN USE

In economics, a distinction is drawn between value in use and value in exchange, with the former being the value derived from utilization of an asset and the latter being what the asset could be exchanged for. In real estate appraisal texts, market value has effectively become synonymous with exchange value. Because mortgage lending, ad valorem taxation, condemnation and most other valuation assignments generally call for market value opinions, value in use is sometimes regarded as having little practical application. However, as debates regarding “dark stores” and property rights have increased, value in use has become a more important and applicable concept than ever.

A common misconception is that value in use is subjective; that market value is what a thing would sell for, while value in use is what it is worth to one particular party, based on their own needs, tastes and opinions. Use value is commonly confused with investment value, which is, “The value of a property to a particular investor or class of investors based on the investor’s specific requirements.”

It is also necessary to clear up confusion between the terms value in use and use value. Use value is a type of value. Use Value is distinct from market value, as are disposition value, investment value and insurable value. Value in use, on the other hand, is a valuation premise. There are two common definitions of value in use, one used more often in real estate and valuation and the other more common in accounting and finance.

Value in Use – (1) The value the real estate contributes to the enterprise of which it is a part.

This first definition is tied to the economic principle of value in use, which is the value an enterprise derives from use of the asset. An important point to consider here is that the amount an asset contributes to the value of an enterprise is not subjective, and it is not from the perspective of the current owner. It is the actual contribution the asset makes to the total value of the enterprise in a market-based sale. If the amount a specialty manufacturing enterprise would sell for declines by $5,000,000 when the building is excluded from the sale, it can be concluded the value in use of the building is $5,000,000. In fact, in a market value scenario, it is necessary to specify that the hypothetical sale of the going-concern must meet the conditions implicit in the common definitions of market value (typically motivated and knowledgeable buyer and seller, reasonable exposure time, etc.) It is also logical to conclude that the maximum value in use is replacement cost minus physical depreciation. An asset cannot contribute more value to an enterprise than the enterprise would expect to pay for a replacement. Any special benefit an enterprise derives from owning or controlling a particular property, or a particular group of properties, would properly be allocated to intangible assets rather than to the value in use of the property itself.
Market Value in Use is Not an Oxymoron

Value in Use – (2) The present value of future cash flows expected to arise from the continuing use of an asset and from its disposal at the end of its useful life. This second definition of value in use is used in accounting and finance. In U.S. financial reporting, value in use replaces book value when an asset suffers impairment. Although the emphasis here is on cash flows rather than sales price, this definition meshes quite cleanly with the first. If the discount rate selected is appropriate and market-based, the resulting present value calculation should equal the value contribution to the enterprise. For real property, the cash flows from the asset would be the net amount of rent the enterprise saves by owning a property. For specialized space, the rent savings must be calculated from the perspective of the tenant enterprise. It is how much rent the enterprise would expect to pay for a replacement, either by having a replacement built to suit or by having an existing property remodeled to the specialized use. Appraisers sometimes refer to this as first-generation market rent, which is the appropriate rent for the tenant the space was designed for, in contrast to second-generation market rent, which is the rent that could be expected from subsequent tenants.

Use Value – In real estate appraisal, the value a specific property has for a specific use; may be the highest and best use of the property or some other use specified as a condition of the appraisal. Use value assumes a specific use which may or may not be the property’s highest and best use. It stands to reason that, if highest and best use is the use that maximizes value, then use value can be equal to or less than market value, but never greater. The common example is farm ground in the path of urban growth that must be valued strictly on the agricultural use for property tax purposes, although some other use is the actual highest and best use. This is a useful valuation concept, but clearly different from value in use. Value in use often exceeds value in exchange.

Unfortunately, the discussion of use value in the “The Appraisal of Real Estate” also mixes in the concept of value contribution to an enterprise and never directly addresses the difference in the concepts. However, the text does make the point that confusion can arise because appraisers often use the terms value in use and use value synonymously, whereas the International Financial Reporting Standards define value in use as “the discounted present value of estimated future cash flows…” (the second definition above). To clear up the confusion and allow appraisers to understand value in use, it is necessary to make a definite distinction. Use value should be defined just as it is in “The Appraisal of Real Estate, 14th Edition.” Value in use, on the other hand, must be defined in terms of the first two concepts discussed above.

Understanding Value in Use

To clarify the concept of value in use, it is helpful to look to accounting, financial reporting and the other valuation professions (business, personal property and financial instruments). They deal with the issue more frequently and may have a more refined understanding of the concept.

When business appraisers value a business enterprise, they consider two valuation premises: the going concern premise and the liquidation premise. Under the going concern premise, the business is valued as a unified operating enterprise, generally based on the amount of income the business generates. In the liquidation premise, the business appraiser assumes the business is closed and the assets are sold off in an orderly disposition. Whichever valuation premise results in the highest value indication determines the market value of the business. In that way, this use of two valuation premises is similar to determination of highest and best use by a real estate appraiser. The business appraiser is effectively asking which option is best for the owner of a business, to continue operating or to close the business down and sell off the assets. Of course, in some instances, the amount that a business’s assets can be sold for exceeds what can be justified by continued operation. In the going concern premise, the proper
Market Value in Use is Not an Oxymoron

For purposes of illustration, consider a hypothetical franchisee operator of a single Sonic restaurant. The business owns the real property and personal property, and has been open just long enough to clearly demonstrate what its stabilized income is likely to be. The building is iconic and easily identified as one belonging to this chain. The cost of the real property was $3,000,000, including land and a developer fee for a turn-key construction of the building. The cost of personal property was another $500,000. It is likely no other user will be willing to pay $3,000,000 for this specialized construction, but assume it could be sold to a second-generation user for $2,000,000; and, further assume that the personal property could be sold second hand for $300,000. The value under the liquidation premise would therefore be $2,300,000.

Now, suppose a business appraiser finds that the business is earning enough income to support a value for the enterprise of $4,000,000 as a going concern. The value under the going concern premise exceeds the value under the liquidation premise, so the market value of the enterprise would be concluded at $4,000,000.

The proper allocation of the market value opinion is based on value in use, as follows:

<table>
<thead>
<tr>
<th></th>
<th>Value</th>
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<tbody>
<tr>
<td>Real Property</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Personal Property</td>
<td>$500,000</td>
</tr>
<tr>
<td>Intangible Property</td>
<td>$500,000</td>
</tr>
<tr>
<td><strong>Market Value of the Enterprise</strong></td>
<td><strong>$4,000,000</strong></td>
</tr>
</tbody>
</table>

Although the real property would sell for only $2,000,000 on a second-generation basis, the $3,000,000 allocation to the real property above is appropriate because the real property contributes $3,000,000 to the value of the enterprise. If the owner tried to sell the business without the building, the obtainable price would be $3,000,000 less because potential buyers would be faced with spending $3,000,000 on a replacement. The real property quite literally adds $3,000,000 to the market value of the going concern.

Now, suppose instead that the business appraiser finds the business is generating only enough income to support a value of $2,000,000 under the going concern premise. In that case, a knowledgeable buyer would recognize that liquidation is the higher and better alternative, so the enterprise is valued at $2,300,000 and allocation of the market value opinion is market value in exchange, as follows:

<table>
<thead>
<tr>
<th></th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Property</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Personal Property</td>
<td>$300,000</td>
</tr>
<tr>
<td>Intangible Property</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Market Value of the Enterprise</strong></td>
<td><strong>$2,300,000</strong></td>
</tr>
</tbody>
</table>

This simple illustration demonstrates the difference between value in use (the amount a property contributes to the enterprise) and market value in exchange (the amount the property could be sold for, separate and apart from the enterprise). The value in use of the real property in this example is $3,000,000 and the value in exchange is $2,000,000.
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**Summary**

The conclusion that can be drawn from these considerations is that value in use and use value are different concepts, and that a distinction must also be made between value in use and value in exchange. The following is a suggested definition of value in exchange for real estate appraisers, paraphrased from IFRS and GAAP:

**Value in Exchange** – The value of a property on a stand-alone basis, separate and apart from other assets or the enterprise of which it is a part.

**NEW THINKING – MARKET VALUE IN USE**

Returning now to the hypothetical Porsche dealership discussed in Ottawa, it was assumed the turn-key price of the property was $4,000,000, which was supported by business operations, but other dealers would pay only $3,200,000 because they could not benefit from the specialized building features. Application of the above definitions would clarify that the value in use of the real property is $4,000,000, because the real property would contribute that amount to a sale of the dealership enterprise as a going concern. The value in exchange of the real property is only $3,200,000 because the real property would bring only that amount if it was sold separate and apart from the other assets in the business. However, the question that caused the disagreement for various intended uses was, “what is the appropriate market value?” The real estate appraisal profession has traditionally held that market value is a value in exchange, so it is reasonable that some appraisers have claimed that only $3,200,000 could be reported as the market value of the dealership property. In like manner, only $2,000,000 could be reported as the market value of the Sonic restaurant building in the example. However, this stance has created considerable confusion and controversy, as well as some practical problems. It differs from the position of accountants and other valuation professionals (business, personal property and financial instruments). In many cases, it is also contrary to court rulings.

In an article titled *Square Pegs, Round Holes, Easy Targets: Valuing Special-Use property in Eminent Domain*, the authors note that fair market value is the standard measure of just compensation in eminent domain, but that fair market value is sometimes not actually “just.” If market value can only be measured as value in exchange, then the appropriate compensation for a taking of the Sonic restaurant would generally be $2,000,000, although the owner just spent $3,000,000 constructing it. That would hardly seem to satisfy the requirement that the condemnee be placed in the same position money-wise as they were before the taking. The opinion of the *Square Pegs* authors is that, “Value in use, rather than value in exchange, may offer a more defensible standard to determine just compensation for special-use properties.” Both statutes and case law do sometimes allow alternate valuation for special-use property, including income capitalization or replacement cost techniques, but the authors note, “a uniform method of measuring compensation in the taking of special-use properties has never been developed.” J.D. Eaton in “Real Estate Valuation in Litigation” makes that same comment, and adds, “…thus the potential for widely divergent value testimony is great.”

Courts have been equally inconsistent in rulings regarding assessed valuation for ad valorem taxation. Appraisers working for assessors generally argue that the current use and current user must be considered among the alternatives in determining highest and best use. The highest and best use of the new Porsche dealership in that case would be as a Porsche dealership, and market value would be the full replacement cost of $4,000,000. Appraisers working for taxpayers emphasize the value in exchange concept and argue that market value is $3,200,000 because no subsequent buyer would pay more than that. It is beyond the scope of this article to fully consider the arguments on both sides or to review cases, but one good recent summary from the perspective of taxpayers is included in an article in the Summer 2016 issue of “Insights.” Another, more from the perspective of assessors, is in a
November 2015 article in the IAAO magazine, “Fair & Equitable.” Suffice it to say, both seem to believe the courts are generally on their side, but both acknowledge substantial inconsistency.

Faced with situations where court precedents or the law indicate value in use is the proper measure of market value, some appraisers have adopted the term *market value in use* when referring to a market value opinion under a value in use premise. At least one state (Indiana) has written that term directly into the property tax code. The term can seem oxymoronic to some real estate appraisers, because real estate appraisal texts have generally construed market value only as a value in exchange. However, valuation professionals dealing with business appraisal, financial instruments, personal property and financial reporting already utilize definitions that consider value in use to be a market value concept.

For business appraisers, consideration of both the going concern premise and the liquidation premise is necessary to determine highest and best use. It is a recognition that the value of a business should be based on the use and buyer class that results in the highest price. Note that from the perspective of the business appraiser, the $3,000,000 value-in-use of the Sonic restaurant and the $2,000,000 value-in-exchange are both measures of the market value of the real property, but the first is based on the going concern premise, while the second is based on the liquidation premise. If sold together with a successful business, the real property brings $3,000,000, but if sold separate and apart from the business, it would bring only $2,000,000.

The accounting profession has a very similar perspective. An excellent discussion of *fair value* in “The Appraisal of Real Estate, 14th Edition” explains that, for most practical purposes, the definition of fair value from the U.S. Financial Accounting Standards Board is equivalent to the concept of market value. It then makes the following explanation:

A fair value measurement assumes the highest and best use of the asset by market participants, considering the use of the asset that is physically possible, legally permissible, and financially feasible at the measurement date. The highest and best use of the asset establishes the valuation premise used to measure the fair value of the asset, specifically:

1. In use. The highest and best use of the asset in use would provide maximum value to market participants principally through its use in combination with other assets as a group.

2. In exchange. The highest and best use of the asset in exchange if the asset would provide maximum value to market participants principally on a stand-alone basis.

Note that to conclude the highest and best use of an asset, an accountant must go beyond determining what is physically possible, legally permissible and financially feasible; they must also determine whether value would be maximized by selling the asset as part of a group of assets (typically a going concern) or on a stand-alone basis. This is somewhat related to the concept of most likely buyer utilized by real estate appraisers. When the real property contributes more value to the enterprise than it has on a stand-alone basis, the most likely buyer is a buyer of the entire enterprise.

Personal property appraisers have a similar take on this issue. The Machinery & Technical Specialties Committee of the American Society of Appraisers has definitions for twelve different value concepts and valuation premises, including a base definition of fair market value. Two of the *fair market value* premises are:

- **Fair Market Value in Continued Use:** An opinion, expressed in terms of money, at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, as of a specific date and supported by the earnings of the business [emphasis added].
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• **Fair Market Value – Removed:** An opinion, expressed in terms of money, at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, considering removal of the property to another location, as of a specific date [emphasis added].

Here again, it can be noted that valuation professionals are utilizing a value in use concept and a value in exchange concept, but are referring to both as market value. Value in use and value in exchange in these professions are considered valuation premises, not wholly different valuation concepts.

The use of valuation premises is not new to real estate appraisers. For subdivisions, appraisers commonly report both the bulk value and the aggregate of retail values for lots or units. Both are considered market value, but a distinction is made based on whether the lots/units are sold separately or apart. In valuing a portfolio of investment properties, appraisers must recognize the potential for a portfolio premium, because the portfolio may sell for more together than if the individual properties were sold separately. In the same sense, by identifying whether a market value opinion is based on a value-in-use premise or a value-in-exchange premise, the appraiser is clarifying whether the asset is assumed to be sold together with other assets, or separate and apart.

The following are suggested as additions to the lexicon of real estate appraisers:

**Market Value in Use** – market value under the value-in-use premise; assumes the property is sold in combination with other assets as a group.

**Market Value in Exchange** – market value under the value-in-exchange premise; assumes the property is sold separate and apart from any other asset.

Utilizing these definitions, real estate appraisers may provide market value opinions under either valuation premise, or both. In cases where courts have found that the market value of a special-purpose property must consider the current user and current use, a market value in use opinion may be most applicable. In other jurisdictions, or for mortgage lending and other purposes, a market value in exchange opinion may be more appropriate. Of course, it is vitally important that the valuation premise be clearly defined and explained, so the user of a report cannot be misled. A special-purpose property will only bring its market value in use if it is sold together with other assets as part of a going concern. Market value in exchange only applies if the property is sold separate and apart from any other asset.

The following recap briefly discusses practical application of the concept of market value in use in real estate appraisals:

• For any property with special design, construction or location for the current tenant, market value conclusions should distinguish between market value in use and market value in exchange. For general purpose properties, no distinction is applicable.

• Market value in use implies a hypothetical sale of the subject as part of an enterprise or a group of assets on the valuation date, with all the conditions of market value (no atypical motivation, knowledgeable buyer and seller, reasonable exposure, etc.) It is not a subjective measure of value from the current owner’s perspective.

• Market value in use cannot exceed replacement cost minus physical depreciation because the value contribution of a property cannot be more than a buyer of the enterprise would expect to spend on a replacement.

• If property is vacant or not used by the tenant or purpose it was originally designed for, it is unlikely that current market value in use exceeds market value in exchange.
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- In many cases, the cost approach is a primary valuation method for market value in use. It is only meaningful in determining market value in exchange if the estimate of obsolescence can be supported.
- Market value in use can reflect functional and external obsolescence, but those calculations are from the perspective of the current tenant. If the improvement is no longer the ideal improvement for the current tenant, obsolescence is evident even under a value in use premise. As with market value in exchange, it is improper to simply assume the current use is the highest and best use of the property.
- A market value in use indication by the income approach is calculated as the present value of future cash flows (including reversion). For an owner-occupied property, the periodic cash flows are the net amount of rent saved from ownership of the property (so-called first-generation market rent), figured from the perspective of the current tenant. On the other hand, a market value in exchange indication by the income approach is based on second-generation market rent, figured from the perspective of the market in general rather than the current tenant.
- The sales comparison approach is a primary valuation method for market value in exchange. A market value in use indication by the sales comparison approach presents special challenges, but may be possible based on purchase price allocations from sales of going concerns, or on sales of leased fee interests if it can be shown that the leases were negotiated on an arms-length basis. Each of those data sets must be used with caution. Sale-leaseback transactions often involve non-market rent or atypical motivation, and may not be a reliable basis of comparison, even for market value in use.

CONCLUSION

It is not the intent of this article to suggest whether market value in use or market value in exchange is the appropriate measure of market value in any particular property tax assessment, condemnation action or mortgage loan underwriting. Legislatures, courts, regulators and others must make those decisions. Appraisers should be aware of and comply with any specific statutes, regulations or cases of the jurisdiction applicable to each assignment. Nevertheless, a proper understanding of valuation premises will allow laws and regulations to be clarified and will result in appraisals that are more consistently developed, understood and applied.

ABOUT THE AUTHOR

Kerry M. Jorgensen, MAI is an active real estate appraiser. He has been an instructor for the Appraisal Institute for more than 30 years and has served that organization as a chapter president and on the national board of directors, as well as on numerous committees and project teams. He has authored courses and seminars, and is a contributor to the current editions of The Appraisal of Real Estate and The Dictionary of Real Estate Appraisal. Among his awards and honors are the 2014 Armstrong-Kahn Award – For Outstanding Original Article in the Appraisal Journal, the 2015 Dr. William N. Kinnard, Jr. Award – Appraisal Institute Education Trust, a 2015 Presidents Award – Appraisal Institute (Lance Coyle, MAI 2015 National President), and the 2016 Edward Adams Outstanding Board Services Award (AI National Executive Committee).
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ENDNOTES

2. Ibid., pg 121.
4. International Financial Reporting Standards, Appendix A
6. The liquidation premise is not comparable to liquidation value as it is understood by real estate appraisers. Liquidation value involves atypical seller motivation and a restricted exposure time. Those are not criteria for an orderly liquidation as it is used by business appraisers. Business appraisers do provide value opinions assuming a forced liquidation, but that is a different valuation premise.
8. Ibid., pgs 262-263.
9. Ibid.
12. Wilmath, Tim, and Pat Alesandrini, CAE. “Thinking Outside the Big Box.” Fair & Equitable, November 2015.

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