

STATE OF WISCONSIN
TAX APPEALS COMMISSION

ASHLEY FURNITURE INDUSTRIES, INC.,

DOCKET NOS. 09-M-210
THROUGH 09-M-227,
AND 11-M-075
THROUGH 11-M-092

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION AND ORDER

*Per Curiam:*¹

The Commission conducted a trial in these cases in Madison on March 6-9, 2012. The Petitioner was represented by Attorney Joseph Pickart, Attorney Jennifer Jin, and Attorney David C. Swanson of Whyte Hirschboeck Dudek, S.C., Milwaukee, Wisconsin. The Respondent, the Wisconsin Department of Revenue (“the Department”) was represented by Attorney Peter D. Kafkas. These cases involved taxpayer challenges to the manufacturing personal property assessments and real property assessments relating to its furniture-making plant in Arcadia, Wisconsin, for the years 2009 and 2010.

¹ This case was heard before Commissioner Thomas J. McAdams. Following the trial but prior to the final decision, Commissioner McAdams left the Commission. However, prior to his departure, Commissioner McAdams reported to the Commission his impressions of the facts and testimony from the trial.

As to both the personal property assessments and the real property assessments, we find for the Department.

Having considered the record before it in its entirety, the Commission finds, rules, and orders as follows:

FINDINGS OF FACT

The trial in these matters lasted four days. The evidence can be divided into two basic issues. First, the Petitioner challenged the Department's manufacturing personal property assessment for 2009 and 2010. Second, the Petitioner challenged the Department's manufacturing real property assessments of the 17 tax parcels which comprise the Ashley furniture-making plant in Arcadia for the same years.

A. Jurisdictional and Procedural Facts

1. The Petitioner is a Wisconsin business corporation, with its principal place of business located at One Ashley Way, Arcadia, Wisconsin.
2. The Ashley Plant is over 2 million square feet, situated on 17 tax parcels in Arcadia, Wisconsin. (Tr. at 506-507.)
3. In 2009, the Department assessed Ashley's personal property at a total value of \$8,104,300; in 2010, the Department assessed Ashley's personal property at a value of \$7,340,000 (together, "personal property assessments.") Ashley timely objected to the Department's personal property assessments, filing objections for both tax years. (Prop. A, Ex. A-D.)²

² In the citations, Property A ("Prop. A") refers to the personal property. Properties B through R (collectively, "Prop. B-R") refers to the 17 individual real property tax parcels. Each of the individual properties has jurisdictional documents marked as Exhibits A through D.

4. In 2009 and 2010, the Department assessed the 17 tax parcels individually; the aggregate total of the real property assessments for each year for the entire Ashley Plant campus was \$14,056,800 (the “real property assessments”). (Tr. at 730.) Ashley timely objected to the Department’s personal property assessments, filing objections for both tax years. (Prop. B-R, Ex. A-D.)

5. Ashley timely objected to its 2009 and 2010 assessments before the State Board of Assessors, which upheld all of the assessments. Ashley then timely filed Petitions for Review with the Tax Appeals Commission for 2009 and 2010 tax years. (Prop. B-R, Ex. A-D.)

B. Material Facts

6. The assessments were all based on a 2005 site visit, on self-reporting forms, and on the premise that the highest and best use of the Ashley Plant was its existing use (*i.e.*, manufacturing as a single economic unit). (Tr. at 728-29 and 731.)

As to the Personal Property Assessments

7. The difference between the Department's 2009 and 2010 assessments and Ashley's opinions of value of the personal property related primarily to the value of Ashley's storage racking, batteries, and certain vehicles. (Ex. 4, Att. B at 8-9.)

8. Petitioner’s real property appraiser did not appraise Wisconsin property with any frequency in Wisconsin, nor was he familiar with the specific requirements of the *Wisconsin Property Assessment Manual*. (Tr. at 233.)

9. Although Petitioner offered evidence that the racking was older and possibly too large for some subsequent users to employ effectively, the racking in the Ashley properties is in good condition and could be used for any number of warehouse or manufacturing storage applications. (Tr. at 692.)

10. Petitioner gave its property expert letters from vendors or prospective vendors who expressed opinions regarding the resale potential or lack thereof for the racking. The expert relied on those letters to value the racking equipment for trial. (Tr. 690; 695-696.) He concluded that the racking was only valuable as scrap and assigned a 10% of cost value to the racking as scrap. Without knowing how much the racking weighted, he posited that the racking was worth \$160-\$208/ton or approximately \$0.10/pound. (Tr. at 318-319 and 208-09).

11. Petitioner's expert conceded that the racking could be used by future buyers of the Ashley Plant but did not consider that in his analysis. (Tr. at 331-333.)

12. Petitioner's expert presented alternative values for certain batteries used in vehicles at the Ashley Plant based on his knowledge these batteries and his opinion of their life span. (Tr. at 219-220.)

13. Petitioner's expert presented alternative values for certain vehicles used in the Ashley Plant based on computer searches and his knowledge of the market for such items. (Tr. 224-25.)

14. For the remainder of the personal property, Petitioner's appraiser used the cost approach using the Department's depreciation factors. (Tr. at 226 and 235.)

15. The Petitioner submitted annual personal property returns to the Department which indicated property acquired and disposed of during each year. (Tr. at 706-07.) The Department used the information from the forms submitted by the Petitioner in preparing its assessments of Ashley's personal property. The forms and the assessments used the *Wisconsin Property Assessment Manual's* recommended approach utilizing the Composite Conversion Factors. (Tr. at 688-699 and 728; Ex. 4, Att. D, Form M-P.)

As to the Manufacturing Property Assessments

16. For 2009 and 2010, the Department assessed each of the 17 parcels with individual valuations as follows:

**Ashley Furniture Plant 2009 and 2010
Departmental Assessments**

Parcel No.	Docket Nos.	Dept. Total Assessment
79-61-201-R000035	09-M-211 and 11-M-076	\$36,800
79-61-201-R000104	09-M-212 and 11-M-077	\$1,548,800
79-61-201-R000090	09-M-213 and 11-M-078	\$2,000
79-61-201-R000030	09-M-214 and 11-M-079	\$179,600
79-61-201-R000087	09-M-215 and 11-M-080	\$7,500
79-61-201-R000193	09-M-216 and 11-M-081	\$12,000
79-61-201-R000127	09-M-217 and 11-M-082	\$51,700
79-61-201-R000037	09-M-218 and 11-M-083	\$9,000
79-61-201-R000130	09-M-219 and 11-M-084	\$183,800
79-61-201-R000195	09-M-220 and 11-M-085	\$146,000
79-61-201-R000115	09-M-221 and 11-M-086	\$3,377,500
79-61-201-R000125	09-M-222 and 11-M-087	\$242,100
79-61-201-R000300	09-M-223 and 11-M-088	\$16,100

Parcel No.	Docket Nos.	Dept. Total Assessment
79-61-201-R000305	09-M-224 and 11-M-089	\$74,400
79-61-201-R000190	09-M-225 and 11-M-090	\$12,200
79-61-201-R000120	09-M-226 and 11-M-091	\$3,150,100
79-61-201-R000134	09-M-227 and 11-M-092	\$5,007,200
TOTAL		\$14,056,800

17. The Department's 2009 and 2010 assessments were based upon a site visit which occurred in 2005. The assessment calculations were premised upon the theory that all the tax parcels comprised one large industrial facility which would be sold as such. (Tr. at 731.)

18. At trial, the Department's assessor testified that the highest and best use of the Ashley Plant, retroactive to the tax years at issue, was as several economic units.³ The Department presented evidence of newer higher valuations for each of the 17 parcels in keeping with the required manner of assessing each parcel individually.

19. The valuations, based upon the 2011 visit, resulted in an aggregate valuation that was significantly higher than 2009 and 2010 assessments of the same properties. The updated 2011 valuations totaled \$29,379,600. (Tr. at 751.)

a. The Ashley Plant Attributes

20. Ashley is a Wisconsin-based manufacturer of case goods and upholstered furniture. Case goods consist of household furniture of all types, including

³ The Petitioner mischaracterized this testimony to imply that the Department was suggesting the property would be sold as 17 separate economic units, which was not the witness's testimony. "It doesn't have to be 17 different separate condominiums and they wouldn't be anyway, because there are properties that do lie outside the production facility area." (Tr. at 43.) "You know, you keep referring to 17 different parcels as well, but most of those parcels are vacant land, so it would actually be, you know, closer to the seven improved parcels." (Tr. at 744.)

chests of drawers, nightstands, triple dressers, headboards, footboards, mirrors and other things of that nature. Upholstered goods consist of fabric or leather-covered furniture of various types, including sofas, chairs, ottomans and recliners. (Tr. at 43.)

21. The Ashley Plant, located in Arcadia, Wisconsin, consists of 2,100,000 square feet of improvements used by Ashley in support of its manufacturing operations. The Ashley Plant is properly described as a light manufacturing facility and consists of “a lower style quality of construction.” (Tr. at 400, 406.)

22. The Ashley Plant is located entirely within the designated flood plain of the Trempealeau River. Because of its location within the flood plain, certain portions of the Ashley Plant flood “regularly, often multiple times within each year.” (Tr. at 68.)

23. The Ashley Plant includes excess unimproved land, located within the flood plain. Construction in a flood plain must comply with specific ordinances; therefore, in order to repurpose a building residing on a flood plain, the building must be brought up to code. (Tr. at 70; 110; 115-116.)

24. Over 4,000 Ashley employees work at the Ashley Plant. Manufacturing runs three shifts, five days per week, and shipping runs 24 hours per day, seven days per week. (Tr. at 73.)

25. The Ashley Plant is situated on 17 contiguous tax parcels, all of which currently form a single integrated manufacturing facility of case goods and upholstery goods. (Prop. A-R, Ex. G.)

26. Ashley bought its first building in 1970 and began building and buying additional building space as well as land in 1971. The acquisitions and construction were accomplished in stages over the past 5 decades as the business lines expanded and more capacity and related facilities were needed. Buildings were constructed when and where they were needed, and some cross tax parcel lines. (Tr. at 31-41.)

27. The Ashley Plant campus consists of 4 plants some of which are connected, each comprised of several phases, along with numerous docking areas, rail access, a truck maintenance and service shop, corporate offices, and a wellness center clinic, training center, and visitors' center. (Tr. at 31-41.)

28. Because the Ashley Plant buildings were constructed intermittently over several decades the construction is "piecemeal," resulting in older buildings built with shorter ceiling heights and newer buildings with taller heights. (Tr. at 416.)

29. For many processes, materials are moved to and from various buildings or warehouses throughout the Ashley Plant for processing depending upon the product being manufactured. (Tr. at 46-48.)

30. Throughout these manufacturing processes, materials are regularly moved from one building to another, which requires moving them outside, including moving them across the railroad tracks that cross the Ashley Plant. (Tr. at 47-48.) Additional expenses are incurred for packaging which is necessary to protect these materials from damage while they are exposed to the elements while outdoors and to

ensure safe transportation while being transported up and down the various elevations throughout the Ashley Plant. (Tr. at 55-57.)

31. A manufacturing facility that requires movement of materials between different buildings and elevations is less than ideal. (Tr. at 56-57.)

32. One of the major challenges facing Ashley with respect to its product flow through the Ashley Plant is the inconsistent flow from start to finish of operation. In addition, the narrow nature of the buildings limits Ashley's ability to automate its manufacturing operations. (Tr. at 77-78.)

33. Utilities and services, such as the fiber-optic network, were shared among the various portions of the Ashley Plant. (Tr. at 59-60.)

34. As of January 1, 2009, there existed several deferred maintenance problems with the Ashley Plant. These deferred maintenance items included re-roofing, concrete floor resurfacing, electrical and lighting upgrades, exterior painting, ceiling insulation, and other similar projects. (Tr. at 64-68.) The costs to cure these deferred maintenance items within a two-year to five-year period were estimated at \$2,790,758. (Ex. F at 125.)

35. As of January 1, 2010, only one deferred maintenance item of the Ashley Plant had been addressed at a cost of roughly \$74,000, an amount "significantly higher" than what had been estimated at the time the deferred maintenance list was created. (Tr. at 67.)

b. Ashley Plant Location: Arcadia, Wisconsin

36. Arcadia, Wisconsin, is not an ideal location for a large industrial facility because it is not proximate to any major population centers or interstate highways. (Tr. at 391.) One of the bigger challenges for the Ashley Plant is its lack of proximity to its suppliers and customers. (Tr. at 78.)

37. The area surrounding the Ashley Plant has a relatively low population density with a lower than typical level of median and household family income. (Tr. at 393-394.) Arcadia itself is home to only 2100 people. (Tr. at 784.)

38. Ashley is the main employer in the Arcadia area, and there are no other employers of similar size or scale located there. There are no large industrial facilities comparable to the Ashley Plant located near Arcadia. (Tr. at 395.)

c. The Department's Initial Assessments of the Ashley Plant

39. A property assessment specialist with the Department was responsible for assessing Ashley's real and personal property beginning with the 2001 tax assessment through and including the 2009 and 2010 tax assessments. (Tr. at 504-505.)

40. In discharging her duties as an assessor, the Department's assessor personally inspected the Ashley Plant in 2000 for the January 1, 2001 through January 1, 2005 assessments, and again in 2005 for the January 1, 2006 through the January 1, 2010 assessments. (Tr. at 504-05.)

41. The 2000 and 2005 inspections enabled the Department's assessor to identify the fair market value of the Ashley Plant and to audit the personal property to make certain that all the assets were being reported correctly. (Tr. at 505; 727-728.)

42. In intervening years in which the Department's assessor did not personally inspect the Ashley Plant, she reviewed the annual manufacturing real estate returns filed by Ashley, on which Ashley self-reported new construction, remodeling, or demolition. She also viewed Ashley's personal property returns. She incorporated that information into her assessments for those years. (Tr. at 728-29.)

43. In arriving at the 2009 and 2010 assessments of the Ashley Plant, the Department's assessor concluded, as she had in previous assessments, that the highest and best use of the property was a "large industrial facility." (Tr. at 731.)

44. When making the assessment for 2009 and 2010, the Department's assessor concluded that the 17 tax parcels of the Ashley Plant had an aggregate value of \$14,056,000. (Tr. at 731.)

**d. Petitioner's Expert's Opinion of
Value of the Ashley Plant**

45. Ashley provided an appraisal of the real property at issue in these matters as of January 1, 2009. ("appraisal"). (Prop. B-R, Ex. F.) The appraisal was prepared by an expert with extensive credentials who had been appraising real property since 1984. He is the president of an appraisal firm that specializes in appraising commercial property in the upper Midwest and is a Member of the Appraisal Institute ("MAI"). He specializes in the valuation of industrial properties

over 1 million square feet, and has appraised approximately 50 properties of that size located in 15-20 states. (Tr. at 378-384.)

46. As an appraiser, Petitioner's expert is required to comply with the Uniform Standards of Professional Appraisal Practice ("USPAP") and the standards of the Appraisal Institute. (Tr. at 383-384.) The Appraisal Institute publishes *The Appraisal of Real Estate*, which is the main reference book for appraisers regarding professionally accepted appraisal methods, procedures, and techniques for preparing appraisals. (Tr. at 384-385.)

47. Petitioner's appraiser was not licensed in Wisconsin, nor was he familiar with the specific requirements of the *Wisconsin Property Assessment Manual*. (Tr. at 448, 457.)

48. Petitioner's appraiser concluded that the highest and best use was its continued use as "one economic unit." (Tr. at 390.)

49. Petitioner's expert concluded that the Ashley Plant, if placed on the market, would be a national market property and generally marketed to Fortune 500 companies. (Tr. at 389-391.)

50. He identified several instances of obsolescence or deficiencies in or with regard to the Ashley Plant that had a negative impact on the value of the Ashley Plant for the tax years 2009 and 2010. These deficiencies included, but were not limited to:

- a. Ashley's heating plant fueled by wood scraps was highly unusual and likely would not be used by a

- future purchaser, meaning any future buyer is “going to inherit a building that needs a heating system.”
- b. The history of flooding and location of the Ashley Plant in the flood plain.
 - c. The damage caused by flooding and heavy use which contributed to the premature deterioration of concrete floors.
 - d. The variances in age and ceiling height among the buildings of the Ashley Plant, making it more difficult for potential buyers to use for manufacturing or to convert to different uses.
 - e. The awkward layout of the buildings and their low quality of construction.
 - f. Office space accounted for only 2.5 percent of the total square footage of the Ashley Plant, which is a relatively low amount.
 - g. The fact that the United States has experienced a steady decline in manufacturing relative to other lower-cost countries, such as China and India.
 - h. The location of the Ashley Plant in an isolated small town, far from interstate highways and major population centers.

(Tr. at 412-420.)

51. Under the comparable sales approach, Petitioner’s appraiser first identified listings for eight comparable large industrial properties with relevant prices per square foot requested by the sellers. These listings set the upper limit of value. (Tr. at 421-423; Prop. B-R, Ex. F at 62-63.)

52. Petitioner’s appraiser then identified six sales of comparable industrial properties that ranged in size from just over 1 million square feet to just under 2.6 million square feet. Petitioner’s appraiser verified each sale and, following his only deposition by the Department shortly before the Hearing, re-verified and personally viewed all six properties. (Tr. at 429, 432; Prop. B-R, Ex. F at 80-95.)

53. Petitioner's appraiser made adjustments for differences in the sales of the comparable properties as compared to the Ashley Plant, including adjustments for seven property attributes considered important for sales of these types of large industrial properties: 1) population density, 2) industry in the area, 3) age/condition/quality of the building, 4) distance to 4-lane divided highway, 5) percent office space, 6) functional obsolescence items, and 7) land to building ratios. (Tr. at 441-442; Prop. B-R, Ex. F at 94.)

54. The Department presented a department employee witness who was a local assessor in the Eau Claire district for ten years. She testified regarding her review of each of the comparables, which included contacts with the local municipalities for information in their records. (Tr., at 583 et. seq.)

55. Comparable 1 was the September 2008 sale of a tire manufacturing plant in Mayfield, Kentucky, for an average price of \$2.00/square foot. (Tr. at 429; Prop. B-R, Ex. F at 82-83.) After adjustments, Petitioner's expert's "indicated price" was \$2.40/square foot. (Prop. B-R, Ex. F, grid at 95.)

56. Critique of Comparable 1: The Department's witness testified that the property was assessed at full sale price although it was an "end of life" property, much of which was torn down after the sale. In addition, the property did not include but was associated with 50 contaminated acres. (Tr. at 588.)

57. Comparable 2 was the October 2007 sale of a toy manufacturing plant in Booneville, Arkansas, for an average price of \$2.50/square foot. (Tr. at 434;

Prop. B-R, Ex. F at 84-85.) After adjustments, Petitioner's expert's "indicated price" was \$2.90/square foot. (Prop. B-R, Ex. F, grid at 95.)

58. Critique of Comparable 2: The sale involved a warranty deed, and the property was owned by the city owned and leased back to eventual buyer. (Tr., at 590.) The fact that it was sold to an occupant may have affected the sale price.

59. Comparable 3 was the August 2008 sale of a textile manufacturing plant in Rabun Gap, Georgia, for an average price of \$2.09/square foot. (Tr. at 435; Prop. B-R, Ex. F at 86-87.) After adjustments, Petitioner's expert's "indicated price" was \$2.97/square foot. (Prop. B-R, Ex. F, grid at 95.)

60. Critique of Comparable 3: Department's witness determined this was a sale at auction so it should not be considered. (Tr., at 592.)

61. Comparable 4 was the January 2007 sale of a washer/dryer appliance manufacturing plant in Galesburg, Illinois, for an average price of \$0.79/square foot. (Tr. at 436-37; Prop. B-R, Ex. F at 88-89.) After adjustments, Petitioner's expert's "indicated price" was \$2.14/square foot. (Prop. B-R, Ex. F, grid at 95.)

62. The parties agreed that the sale price numbers were transposed so the price of Comparable 4 was actually \$1,918,660 not the \$1,198,660 used by Petitioner's expert. Dividing the actual price by 1,508,554 square feet yields a much higher figure of \$1.27/square foot before adjustments and \$2.62 after adjustments. As a result of the typographical error, this comparable was significantly understated.

63. Critique of Comparable 4: The Department provided testimony that the property was end of life and implied that the sale to an adjacent owner may have affected the price. (Tr., 593-94.)

64. Comparable 5 was the December 2006 sale of a cigarette manufacturing plant in Macon, Georgia, for an average price of \$4.00/square foot. (Tr. at 437-38; Prop. B-R, Ex. F at 90-91.) After adjustments, Petitioner's expert's "indicated price" was \$2.95/square foot. (Prop. B-R, Ex. F, grid at 95.)

65. Critique of Comparable 5: The Department presented unsubstantiated statements about this property's condition, that the local assessor thought it had sold at too low of a price, and that the sale might have included personal property. (Tr., at 595.)

66. Comparable 6 was the April 2006 sale of a lawnmower manufacturing plant in Lawrenceburg, Tennessee, for an average price of \$2.67/square foot. (Tr. at 439-440; Prop. B-R, Ex. F at 92-93.) After adjustments, Petitioner's expert's "indicated price" was \$3.02/square foot. (Prop. B-R, Ex. F, grid at 95.)

67. Critique of Comparable 6: The Department noted that this property had sold subsequently for a much higher price at a bankruptcy sale. This comparable is likely understated. (Tr. at 596.)

68. After making these adjustments, Petitioner's appraiser determined that the fair market value of the Ashley Campus as of January 1, 2009, was \$2.75/square foot, for a total value of \$5,700,000 (after rounding). (Tr. at 443; Prop. B-R, Ex. F at 95.)

Petitioner's appraiser opined that his opinion of value for 2010 did not materially change. (Tr. at 447-448.)

69. Petitioner's appraiser also employed the cost approach and concluded a value of \$5.8 million, which was proximate to his \$5.7 million opinion of value derived through the sales approach. (Tr. at 444-446.)

e. The Department's Opinion of Value at Trial

70. In preparation for trial and because site visits occur on a 5-year frequency, the Department's assessor personally inspected the Ashley Plant a third time on May 16, 2011. (Tr. at 505.)

71. Following her 2011 inspection of the Ashley Plant, the Department's assessor testified that the highest and best use of the Ashley Plant was not its continued use as a single economic unit of a large industrial facility. (Tr. at 643 and 733-35.) The Department's assessor concluded that there was no market for the Ashley Plant as a single facility due to its large size and isolated location. (Tr. at 643.) Instead, the Department's assessor concluded that the highest and best use of the Ashley Plant, retroactive to the tax years 2009 and 2010, was as "multiple smaller manufacturing or warehouse parcels." (Tr. at 684.)

72. The Department's opinion of highest and best use was "predominantly manufacturing. However, given the sizes of many of the improved properties, their proximity to the railroad and the hundreds of shipping & receiving dock-leveled overhead doors, highest and best use could also include warehousing/distribution." (Tr. at 496; Ex. 7 at 5.) The Department's assessor

explained that the use for the pieces however could still be warehousing and manufacturing. (Tr. at 511.)

73. The Department's assessor prepared a report for trial which provided separate values for each of the seventeen tax parcels units, based upon the assessor analysis of how they would exchange in the open market between a willing buyer and a willing seller in an arm's-length transaction. (Ex. 7 at 11-28.)

74. The Department's assessor valued the land separately from the improvements. She considered the land "commercial" and valued it, by comparisons to sales of real estate in the area, at \$15,000 per acre. (Ex. 7 at 8.) She provided an analysis for each of the 17 parcels. (Ex. 7 at 9-10.)

75. The Department's assessor then valued the improvements under the sales approach, comparing each of the parcels to other Wisconsin properties of similar size. (Ex. 7 at 12.)

76. The Department's assessor did not conduct a separation cost analysis or any other type of feasibility analysis to adjust for the separation of a single entity into multiple entities. (Tr. at 736.)

77. The Department's assessor employed each of the three customary approaches to value each of the seventeen different economic units, concluding that the seventeen parcels had an aggregate value of \$26,854,047 under the sales comparison approach, \$70,986,220 under the cost approach, and \$38,336,120 under the income approach. (Ex. 7.) The Department's assessor reconciled the three approaches to

value, weighting the sales approach most heavily, to reach an aggregate total of \$29,379,600. (Ex. 7 at 28.)

78. At trial, the Department's assessor did not explicitly reconcile the new appraised values with the assessed values, two very different value opinions of the same Ashley Plant, for the exact same tax years. (Tr. at 751; Prop. B-R, Ex. I.) She did, however, explain that her 2011 visit justified her change of mind and said the appealed assessments were based on 2005 visit and Petitioner's filings. (Tr. at 728.) She clarified that she was not attempting to discredit the valuations based on her 2005 visit. (Tr. 766-67.)

**f. Petitioner's Rebuttal Expert's
Critique of the Department's Revised Valuation**

79. Ashley engaged as a rebuttal expert witness an appraiser from a firm in Milwaukee to review and critique the Department's assessor's appraisal report derived from her 2011 site visit. (Tr. at 774.) Petitioner's rebuttal witness specializes in the appraisal of large industrial properties and has appraised 100 to 200 industrial properties over his 45-year career at American Appraisal. (Tr. at 773.)

80. Petitioner's rebuttal witness criticized the Department's appraisal for not being precisely in accordance with generally accepted appraisal practices, which are outlined in the Standards of the Appraisal Institute and USPAP. (Tr. at 776-78.) However, the Department presented evidence to show that the Wisconsin Department of Revenue will not be required to follow the specific provisions of USPAP until 2014. (Tr. at 723.)

81. Petitioner's rebuttal witness testified that large industrial facilities typically sell as one unit for use by a single user or to a developer for development for multi-tenant uses. *Id.* He opined that large industrial properties such as the Ashley Plant typically sell on the national market. (Tr. at 780-783.)

82. Petitioner's rebuttal witness stressed all the considerations involved with dividing the property; i.e. zoning, legal requirements, logistics, and other separation costs and explained that these factors needed to be taken into account if the property were to be broken up. (Tr. at 808.)

83. Petitioner's rebuttal expert noted that it would be unusual to sell the property by tax parcel instead of one large entity, that industrial properties in the real world are not bought and sold by tax parcel. (Tr. at 807-809.)

84. According to Petitioner's rebuttal witness, the Department's appraisal was deficient because the largest properties it included as comparable sales were facilities between 100,000 to 600,000 square feet; however, the largest square footage on any particular parcel was 780,500 square feet. (Tr. at 786; Ex. 7 at 26.)

85. Petitioner's rebuttal expert found fault with a number of the comparables because they may have been subject to leases, and he criticized the adjustments used to make the properties comparable to the Ashley Plant properties as being far too large. (Tr. at 786; 800-801.)

86. According to Petitioner's rebuttal witness, the manner in which the Department's assessor employed the three approaches to value was suspect, as they were not consistent with each other in violation of appraisal practice and standards.

Petitioner's rebuttal witness opined that the Department's appraisal was highly unreliable because it provided dramatically differing values based on the different sales approaches with no attempt to explain or reconcile these differences. (Tr. at 791-795.)

87. According to Petitioner's rebuttal witness, the Department's assessor should have provided in the appraisal an explanation as to why the appraised value was so much higher than her initial assessed value of the Ashley Plant. (Tr. at 794.)

88. Petitioner's rebuttal witness agreed that that full real property value must be allocated to the individual tax parcels to determine individual assessment values. (Tr. 809.)

DECISION

The first part of this decision will summarize the law. The second part will address the burden of proof. The third will evaluate the trial evidence regarding the manufacturing personal property assessments followed by the manufacturing real property assessments.

A. APPLICABLE LAW

Statutes

Wis. Stat. 70.32 Real Estate, how valued

(1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally

acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

70.32(2) The assessor, having fixed a value, shall enter the same opposite the proper tract or lot in the assessment roll, following the instructions prescribed therein.

Wis. Stat. 70.995 State assessment of manufacturing property.

70.995(1) *Applicability.* In this section "manufacturing property" includes all lands, buildings, structures and other real property used in manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit. Manufacturing property also includes warehouses, storage facilities and office structures when the predominant use of the warehouses, storage facilities or offices is in support of the manufacturing property, and all personal property owned or used by any person engaged in this state in any of the activities mentioned, and used in the activity, including raw materials, supplies, machinery, equipment, work in process and finished inventory when located at the site of the activity. . . .

...

70.995(7)(b) Each 5 years, or more frequently if the department of revenue's workload permits and if in the department's judgment it is desirable, the department of revenue shall complete a field investigation or on-site appraisal at full value under ss. 70.32(1) and 70.34 of all manufacturing property in this state.

...

70.995(12)(a) The department of revenue shall prescribe a standard manufacturing property report form that shall be submitted annually for each real estate parcel and each personal property account on or before March 1 by all manufacturers whose property is assessed under this section. The report form shall contain all information considered necessary by the department and shall include, without limitation, income and operating statements, fixed asset schedules and a report of new construction or demolition. . . .

Wis. Stat. 73.03, Powers and duties defined

It shall be the duty of the department of revenue, and it shall have power and authority:

...

73.03(2a) To prepare and publish, in electronic form and on the Internet, assessment manuals. The manual shall discuss and illustrate accepted assessment methods, techniques and practices with a view to more nearly uniform and more consistent assessments of property at the local level.

Property Assessment Framework

The process of property assessment is laid out in detail by the Wisconsin Supreme Court in *Nestle USA, Inc., v. Dep't of Revenue*, 2011 WI 4, ¶ 401-403, 331 Wis. 2d 256, 795 N.W.2d 46.

The law requires property taxes to be levied upon all real property in this state, except property that is exempt from taxation. Wis. Stats. §§ 70.01-70.02. The statutes mandate that real property be assessed “from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefore at private sale.”

The Wisconsin Statutes require the Department of Revenue to prepare and publish what is known as the *Wisconsin Property Assessment Manual*. Wis. Stat. § 70.32(2a). Its purpose is to illustrate the acceptable methods for property assessment in Wisconsin. The *Wisconsin Property Assessment Manual* explains that all property must be assessed at its “highest and best use” regardless of the assessment approach utilized by the assessor. A property's highest and best use is “defined as that use which over a period of time produces the greatest net return to the property owner.” *Id.* at 7-9. The *Wisconsin Property Assessment Manual* further provides that the contemplated “highest

and best use” must be 1) legal, 2) complementary,⁴ and 3) not highly speculative. *Id.* Additionally, the property must also be marketable for that use. *Wisconsin Property Assessment Manual*, at 1-1.

The *Wisconsin Property Assessment Manual* and Wisconsin case law set forth a three-tiered methodology for assessing real property's full value at private sale:

First Tier: Evidence of a recent arm's-length sale of the subject property is the best evidence of full value.

Second Tier: If the subject property has not been recently sold, then an assessor must consider sales of reasonably comparable properties.

Third Tier: Only in situations where there has been no arm's-length sale of the subject property and there are no reasonably comparable sales may an assessor use one of the third-tier assessment methods.

Nestle, at ¶¶ 25-28, citing *Markarian v. City of Cudahy*, 45 Wis. 2d 683, 686 (1970); *Property Assessment Manual*, at 7-18 to 7-30.

Caselaw

As a general matter, assessments made by the Department are presumed to be correct, and the burden is upon the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determinations. *Calaway v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-856 (WTAC 2005), citing *Puissant v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984). If there is credible evidence that may support the assessor's valuation in any reasonable view, the valuation must be

⁴ The Property Assessment Manual defines “complementary” as being “in balance with the uses of the property around it.” *Property Assessment Manual*, at 7-9.

upheld. *Universal Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-316 (WTAC 1997).

If the presumption of correctness is successfully rebutted, the Petitioner still carries the burden of persuasion. *Id.* The Petitioner must then prove an alternative valuation supported by credible, direct, and unambiguous evidence. *Royal Terrace Partnership v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-244 (WTAC 1996), *aff'd* in *City of Two Rivers v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-345 (Dane Co. Cir. Ct. 1997).

The assessor's valuation is presumed to be correct. This has been the law in Wisconsin for over a century. *See, State ex rel Miller v. Thompson*, 151 Wis. 184, (1912). If there is credible evidence that may support the assessed valuations in any reasonable view, the assessments must be upheld.

We will first analyze the burden of proof. We will then evaluate the evidence to determine whether the Petitioner has met its burden.

B. ANALYSIS: BURDEN OF PROOF

The Petitioner argues that the evidence has rebutted the presumption. We disagree as to both the personal property assessments and as to the real property.

Presumption of Correctness as to Personal Property

Petitioner's personal property expert presented calculations for the value of the personal property using a piece-meal methodology. He chose to use the sales approach for certain items and the Department's recommended Composite Index for

others. The Department presented testimony that its assessments of the personal property were based upon methodology approved in the *Wisconsin Property Assessment Manual*. Petitioner made no showing that the Department's application of that approved method was faulty or inaccurate. Petitioner's evidence of a different manner of calculation is insufficient to show error in the Department's assessments.⁵ Thus, the presumption of correctness remains intact for the personal property assessments.

Presumption of Correctness as to Real Property

The Petitioner appealed 17 separate real property assessments but did not produce alternative values to each of the assessments. The Petitioner did present its own appraisal of the properties in aggregate but did not show error in the original assessments. Both parties focused their trial testimony instead on the updated values presented by the Department following the 2011 site visit.

The Petitioner has not shown grounds sufficient to rebut the presumption of correctness. Instead, the Petitioner argues that Department itself has negated the presumption in at least one of two ways: 1) because the Department's valuation evidence was based upon a changed highest and best use assumption, and 2) because the Department's valuation evidence reflects a drastic change in valuation as compared to the assessments. For the reasons stated below, we disagree.

The Department's assessor had visited and analyzed the 17 Ashley parcels in 2005. That visit formed the basis for her assessments of the whole Ashley complex

⁵ The evidence on the personal property issued is discussed more fully in later sections of this decision.

for the years 2006-2010. Based on the 2005 site visit, the Department had assessed the Ashley Plant based on the assumption that the highest and best use of these properties was manufacturing as a single economic unit. The assessor also relied on the specific aspects of the plant as derived from the required annual real property returns filed by the Petitioner for the years at issue. The assessments for 2009 and 2010 valued the Ashley properties at an aggregate value of approximately \$14 million.

It is important to note here that, although the Department viewed the highest and best use as one integrated plant, there were nevertheless 17 separate assessments, one for each tax parcel as required by the Wisconsin Statutes. The real property in these cases consists of 17 individual tax parcels which were purchased at various times over the years as Ashley expanded its operations. Seven of those parcels contain structures; ten remain unimproved. The plant currently functions as a consolidated unit but there was testimony by both sides that several of the buildings, such as the wellness and visitors' centers, could function independently.⁶

At trial, the Department's assessor testified that she returned in 2011 to view the property, as is required every five years by Wis. Stat. 70.995(7)(b). Based on her 2011 visit and analysis, she stated the current highest and best use of the property/properties in question is as several smaller entities. She specifically described the highest and best use of the property as "predominantly manufacturing . . . [but] could also include warehousing/distribution." (Ex. 7 at 5.)

⁶ See, e.g., Tr. at 559.

According to the *Wisconsin Property Assessment Manual*, the highest and best use can change over time.⁷ Thus, a change in assumption does not per se invalidate the Department's earlier assessments. If we do not so hold, then every time the Department changes its highest and best use assumption, its preceding assessments will be called into question. We find here that the change in highest and best use assumption from 2005 to 2011 is not unreasonable. The change does not conflict with the assessments to the extent that it would negate the presumption of correctness. Additionally, because the specific use is and was manufacturing, warehousing, and distribution, the specific use may not really be said to have changed at all.

Using the updated assumption, the Department's assessor testified that the current value of the properties if sold piece-meal would total over \$29 million. It is not unusual for the Department to offer an appraisal reflecting a value higher than the assessments being appealed. See, *Seats, Inc., v. Dept. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-762 (WTAC 2004), citing *Hormel Foods Corp. v Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-741 (WTAC 2004), aff'd, Case No. 04-CV-1278 (Dane Co. Cir. Ct. 2004). However, we do take pause at the large discrepancy between the assessed amounts and the values presented at trial.

The Commission looked at the presumption of correctness in light of an appraisal which was *lower* than the appealed assessments in *Universal Foods*, Wis. Tax Rptr. (CCH) ¶ 400-316 (WTAC 1997). In that case, the Commission found that the

⁷ *Wisconsin Property Assessment Manual* at 7-9, 7-10.

Department's testimony of a lower appraised value was a concession that the higher value on the assessment was incorrect. *Id.*

Subsequent to *Universal Foods*, the Commission was faced with a Department appraisal substantially *higher* than the assessment in *Hormel*, Wis. Tax Rptr. (CCH) ¶ 400-741 (WTAC 2004). In that case, the Commission concluded that the presumption of correctness remained intact despite the fact that the Department supported a higher value at trial.⁸ However, the Commission went on to say, "Such a substantial disparity raises questions about either the original assessment or the appraised value offered at trial." *Hormel*, Wis. Tax Rptr. (CCH) ¶ 400-741 (WTAC 2004). Like *Hormel*, these cases involve a truly large discrepancy. The evidence leads this Commission to believe there are questions about the newly calculated values offered at trial but not necessarily the original assessments.

The Petitioner did not rebut the presumption. The Department presented new valuations based upon a different highest and best use assumption which were significantly higher than the assessments. The Department is not using these valuations to impose new and higher assessments on the property but merely to support the Department's position that the assessments being appealed were correct. It is not surprising that the new valuations would not be equal to the assessments which were based on a site visit which occurred nearly 6 years earlier. As long as the Department is

⁸ "The fact that [the Department] can support a valuation in excess at trial determined by the State Board of Assessors does not remove the presumption of correctness." *Hormel*, Wis. Tax Rptr. (CCH) ¶ 400-741 (WTAC 2004).

not seeking to impose the newer valuations as new and higher assessments, the discrepancy is not sufficient to negate the presumption of correctness.

C. ANALYSIS: EVIDENCE

With the presumption of correctness intact, the Petitioner bears a significant burden. Petitioners must prove by clear and satisfactory evidence in what respects the Department erred in its determinations. *Calaway*, Wis. Tax Rptr. (CCH) ¶ 400-856 (WTAC 2005). The presumption of correctness may be overcome only if the challenging party presents significant contrary evidence. *Nestle*, 2011 WI 4.

As to Personal Property Assessments

The Department assessed the personal property in the plant at \$8,104,300 for 2009 and \$7,340,000 for 2010. The Petitioner filed annual personal property returns. The Department's witness testified that the numbers from those reports were used in the determination of the personal property assessments.

At trial, the Petitioner called as an expert witness an experienced personal property appraiser who testified that he performed an audit of the plant and determined that the personal property was worth \$3,951,200 in 2009 and in 2010. Specifically, the taxpayer's appraiser disagreed on the values of certain items of personal property such as racking, batteries, and certain vehicles. *See, e.g.*, Tr. at 202. For those items, he used the sales approach, while for other items of personal property Petitioner's appraiser used the same methodology as the Department had; i.e., the recommended Composite Conversion Factors. The Department asserted that the

Petitioner's expert was cherry-picking by selectively applying the sales approach only to certain large ticket items.

First, as recited above, the Department gets the benefit in these proceedings of the presumption of correctness with respect to the personal property assessments. It simply is not good enough to present an alternative valuation. The Petitioner here had to show error, and that was not done.

Second, there were problems with the Petitioner's approach that made some of the specific valuations not credible. For example, as the Department points out, the witness was unfamiliar with the *Wisconsin Property Assessment Manual*. His analysis consisted largely of looking at websites for sales of similar items without convincing information as to their condition. As an example, the witness valued millions of dollars of valuable metal racking at 10 cents per pound. The expert went so far as to say that the racking was only valuable as scrap which was not credible. His conclusions were based primarily on letters received from the Petitioner's suppliers, most of whom would likely have wished to sell new materials to the Petitioner. He didn't seem to know the weight of the racking so his calculations based on weight are suspect. And when the Commissioner asked if there was a secondary market for reconditioned racking, the witness admitted there was, but that fact did not enter into his valuation, making it even less credible. (Tr. at 356.)

We find there was credible evidence which reasonably supported the assessments. We find that the Petitioner failed to show significant contrary evidence as to the personal property assessments. If there is credible evidence that may in any

reasonable view support the assessor's valuation, the valuation must be upheld. Thus, we uphold personal property assessments.

**As to Manufacturing Real Property Assessments
- Individual v. Aggregate Values**

Before addressing the valuation evidence regarding the manufacturing property, we must first address a threshold issue. These cases involve 17 separate appeals regarding 17 separate tax parcels. Regardless of their current consolidated use, the 17 parcels must nevertheless be assessed individually in accordance with the *Wisconsin Property Assessment Manual*. The Wisconsin Statutes require that each value be entered into the tax rolls of the state, thus these separate valuations are necessary.

The Department's assessor explained,

. . . I just wanted to let you know that this appraisal, though it's one economic unit appraisal, it's actually all divided into 17 unique parcels. The intermingling parts of my appraisal are parts of something that I -- that we do at the Department of Revenue every day and it's not unique to Ashley Furniture appraising at all.

Tr. at 561.

In her critique of Petitioner's expert, the Department's assessor testified as follows regarding Petitioner's appraisal:

Q Did he appraise those 17 [parcels] and give an appraisal value for each of those subject properties?

A No, he did not.

Q By Wisconsin law, is there a requirement that there be a value attributed to each parcel?

A Yes, in the statutes.

...

Q . . . [Petitioner's appraiser's] appraisal was just one big appraisal of what he believed to be one economic unit, isn't that correct?

A Correct.

Q . . . [D]id he go on to the other types of appraisal activities or assessment activities that a Wisconsin property assessment specialist or supervisor would do in assessing each of the individual properties and parcels that are part of these 17 different appeals?

A No, he appraised it as one economic unit and did not further divide it into what the value would be for the smaller parcels.

Tr. at 677 and 683-84.

Petitioner's own rebuttal witness explained the proper procedures:

The property is appraised as 17 different units. It's according to tax parcel. I understand that, I think ten of them were vacant, seven were improved. Now, I understand that eventually, you have to come down to tax parcel, what the value is, but I've been involved in a number of these cases in Michigan and so forth where the first thing you have to do is to arrive at the correct answer for the overall property as one unit, the way it would sell.

...

Property isn't bought and sold by tax parcel. I understand the need to eventually get to a value by tax parcel for assessment reasons, but you have to come up with the right answer. Then you allocate down or you come up with a reasonable way to allocate that value by tax parcel.

Tr. at 787 and 809 (emphasis added).

In its Petitions before the Commission, the Petitioner proffered opinions of separate values for each tax parcel in contrast to each assessment. (Prop. B-R, Ex. D.)

However, at trial, Petitioner presented only an aggregate value for all the parcels which

comprise the Ashley Plant complex. Petitioner did not, in the words of its own rebuttal expert, “allocate down [and] come up with a reasonable way to allocate that [aggregate] value by tax parcel.” *Id.* Petitioner did not even offer the figures listed in the Petitions as “Petitioner’s opinion of value” nor did any witness provide a basis for them at trial. Opinions expressed in the Petitions without explanation are not sufficient.

The presumption of correctness applies to each of the assessments from which Petitioner has appealed. *Miller*, 151 Wis. 184 (1912). The Commission is charged with the duty of determining whether to uphold each appealed assessment. Petitioner’s aggregate valuation evidence did not refute the actual assessments at issue; as such, it does not constitute “significant contrary evidence.” Thus, the Commission is compelled to uphold the assessments.

**Manufacturing Real Property Assessments
-Aggregate Values Only**

For the sake of completeness, we will also address the real property valuations in the aggregate. Petitioner’s evidence was focused on an aggregate value for the entire Ashley Plant complex. The Department presented evidence at trial which, when added together, gave a much higher figure than Petitioner’s value and even much higher than its own assessments. We must keep in mind however, that Petitioner’s burden is to show error in the assessments themselves. *Universal Foods*, Wis. Tax Rptr. (CCH) ¶ 400-316 (WTAC 1997).

Petitioner's Valuation Evidence

Petitioner's expert determined that the aggregate value of the real property was \$5,482,152. The expert based his calculations on the expectation that a purchaser would continue to use the property as one consolidated manufacturing entity. Although the plant's size, location, and other physical characteristics limit its marketability as one unit, the plant is currently used as one unit and that assumption of highest and best use is not an unreasonable one. The appealed assessments were based upon the same assumption used by the Petitioner, i.e., one large industrial entity; thus, Petitioner's highest and best use assumption itself is not contrary evidence.

So, do the calculations of value create significant contrary evidence? We do not find the Petitioner's expert's conclusions strong enough to meet that bar for several reasons.

The Petitioner's expert was not licensed in Wisconsin, nor was he familiar with its *Wisconsin Property Assessment Manual*. While that in and of itself did not discredit this witness, his lack of knowledge of local statutory requirements weakens the impact of his testimony. For example, his lack of familiarity with Wisconsin practice led to his failure to offer separate valuations for each tax lot which we find a serious procedural oversight.

Petitioner's expert focused on a highest and best use as a single consolidated entity engaged in manufacturing/distribution. Petitioner's expert considered but rejected the idea of breaking up the property into multi-tenant use. The expert's approach is in keeping with the highest and best use assumption of the

assessments. In employing the sales approach, he chose his comparables in keeping with this consolidated use assumption, using nationally marketed large industrial facilities.⁹

At trial, there was persuasive testimony which pointed to weaknesses of the Petitioner's appraisal. First, there were questions about the specific choice of comparables. Comparable 1 was not a qualified sale because of a contamination issue which, while excluded from the actual sale, likely factored into its price. In addition, the quality of some of the other comparables was marginal. Admittedly they were marketed to the public for fairly long periods of time, but they eventually sold under circumstances (auction, distress sales) which produces lower than market prices.

Second, the typographical error in the value for Comparable 4 resulted in a severely understated value for that property.

Third, Petitioner's adjustment calculations were suspect. When adjusting the comparables, Petitioner's expert did not value the land and the improvements separately. This runs contrary to the approved methodology in Wisconsin:

A [Petitioner's appraiser's] approach, market approach did not subtract the land value out and generally, in the State of Wisconsin, we do that first, so that was another troubling thing, in my mind.

Q Is that also with regard to the *Wisconsin Property Assessment Manual*?

A Exactly, that's also with regard to the property assessment manual, *Wisconsin Property Assessment Manual* and with

⁹ Because valid comparables were available, the second-tier method of valuation is appropriate, and we need not consider his third-tier calculations.

practices within the Department of Revenue, you always take the land value before you adjust the comparable properties.

Q When property in Wisconsin is assessed, is there a separate assessment, is the assessment distributed between the land and structure?

A You create a separate assessment for the land and a separate assessment for the improvements to be a total assessment.

Tr. at 677-78.

Fourth, Petitioner's expert valued unimproved land as agricultural land which is not the practice in Wisconsin. The Department's appraiser explained,

A I debated over the type of land sales that I wanted to use, but then I knew that I was bound by the *Wisconsin Property Assessment Manual* to choose commercial properties and not agricultural properties, because that's a different -- that would be a different type of land all together.

...

[O]ne point that is disturbing to me as an appraiser is the fact that [Petitioner's appraiser] used agricultural sales, land sales in comparison to the land that Ashley Furniture rests on.

Yes, Ashley Furniture is a large parcel, is a large group of parcels with a lot of acres, around 200 as of January 1, 2009 that we assessed. It isn't comparable to agricultural land and shouldn't be valued as ag land.

Q When you say ag land, you mean agricultural land?

A Correct, agricultural land, agricultural land is not improved, it doesn't have any services provided to it.

Q And when you're saying improved, you mean it doesn't have structures on it or it doesn't have some of the other benefits that city properties would have?

A It doesn't have any of the benefits that city properties would have on it. It doesn't have any commercial appeal like many of the Ashley Furniture properties would. The analysis for commercial land, commercial industrial land should be with other commercial industrial properties and that's what I did in my appraisal, so with respect to the ag use, that is an inconsistent use and valuation method for land.

Tr. at 515-16 and Tr. 666-67.

This incorrect classification led to land values which were understated. (Tr. at 667-68.)

Fifth, Petitioner's appraiser relied on a newer plat which did not come into effect until after the years in question. (Tr. at 676.) As a result, he valued an incorrect number of acres, although this particular irregularity was not overly significant.

In total, with these shortcomings and errors, we believe Petitioner's expert's valuations understated the value of the Ashley Plant complex. Thus, we cannot find that the Petitioner presented credible significant contrary evidence to the assessments.

The Department's Valuation Evidence

The 17 Assessments under appeal totaled approximately \$14M. They were based the most recent site visit prior to the assessments which had occurred in 2005 and on a consolidated highest and best use assumption of manufacturing. They were calculated using annual real property returns filed by the Petitioner.

Wisconsin caselaw requires that assessments be based on actual view which the statutes require to be done on a five-year frequency. Following her tour of

the plant in May 2011, she testified that she believed the current highest and best use of the Ashley Plant complex would be to break the property up into smaller economic units.¹⁰ She explained that the use for the pieces however could still be warehousing and manufacturing. Using this foundation, the Department's assessor testified at trial that the properties had an aggregate value of \$26,854,047.¹¹

Petitioner focused much of the trial on attempting to refute the Department's new value conclusions. At the risk of being repetitious, we again point out that the newer valuation figures are not what is under appeal, but we will address a few of the weaknesses of the Department's updated calculations.

The Petitioner argued that it would not be practical to convert the plant from one large to several small concerns, but there was testimony that similar conversions have been done in Wisconsin. The highest and best use may change over time. A contemplated highest and best use must be 1) legal, 2) complementary, and 3) not highly speculative. The new assumption is not more highly speculative than the expectation that another large company would buy the entire complex, given its age, location, layout, and flood problems, for use as a major manufacturing facility. We find

¹⁰ This suggestion of separate entities was misinterpreted by the Petitioner later to imply that the Department was asserting 17 separate sellable business parcels, but such was not the assessor's testimony. Seven properties are currently improved. Several, though not all, parcels contain separate buildings with different functions which could indeed operate independently. The Petitioner did not suggest that the unimproved parcels could or would be sold separately, nor would that make sense with the flood problems the properties face.

¹¹ She also offered third-tier method valuations of \$70,986,220 under the cost approach, and \$38,336,120 under the income approach. Her revised composite opinion of value was \$29,379,600. Because valid comparables were available, under the *Markarian* methodology, we need not consider third-tier calculations.

the Department's revised assumption to be legal, complementary to the surrounding area, and not highly speculative.

More significantly, Petitioner's rebuttal expert criticized the Department's analysis for failing to consider separation, time-value, and vacancy costs, and the costs to bring buildings in the floodway up to code. In addition, he pointed to the carrying costs of unrented square footage, at least initially. He explained that values also would be affected especially initially by the introduction of a glut of 2 million square feet of retail space onto the tiny market that is Arcadia, Wisconsin. Failure to consider these factors led to an overstatement of the real property values at trial.

These flaws in the Department's valuation analysis however do not constitute the significant contrary evidence necessary for the Petitioner to overcome the presumption of correctness of the assessments.

CONCLUSION

We must uphold the assessments if there is credible evidence that may support them in any reasonable view. *Universal Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-316 (WTAC 1997). The presumption of correctness may be overcome only if the challenging party presents significant contrary evidence. *See, Nestle*, 2011 WI 4. We find there was credible evidence to support the assessments.

With regard to the personal property appeals, there was testimony that those assessments were based on the assessor's 2005 visit and on required annual manufacturing personal property returns outlining equipment and other property purchased and/or disposed of each year. The Petitioner provided alternative

calculations. A different method of calculation falls short of the proof required. Therefore, the personal property assessments must stand.

Similarly, the real property assessments were based on the same 2005 visit and on the Petitioner's annual manufacturing real estate returns wherein Ashley self-reported new construction, remodeling, or demolition. The Petitioner offered an appraisal which was flawed in methodology and its failure to follow the *Wisconsin Property Assessment Manual*. The Petitioner presented no contrary evidence if we view the 17 appeals individually. The Petitioner needed to show something more than a questionable aggregate figure which was lower than the total of the assessment values.

The Department's valuation evidence at trial, although flawed, updates the Department's view of this facility in light of a more recent visit and more recent analysis of the market for such properties. There was little evidence about the 2005 visit and its resulting assessment figures, but insight can be reasonably inferred from the contrasting testimony regarding the 2011 visit. The Department's updated values were overstated because the assessor had not taken into account the considerable separation, vacancy, and carrying costs. We conclude that, had these realities been properly considered, the Department's new value would have been lower and more supportive of the assessments. The Petitioner presented no direct evidence in criticism of the 2005 visit and its conclusions beyond presenting its own calculations which were lower. We cannot say this rises to the level of significant contrary evidence. Therefore, even if we view the appeals in aggregate, we conclude that the Petitioner did not produce

sufficient contrary evidence to meet its burden. Thus, the 17 real property assessments must stand.

CONCLUSIONS OF LAW

1. The Petitioner failed to rebut the presumption of correctness with respect to either the personal property or the real estate assessments.
2. The Petitioner failed to show significant contrary evidence to refute the personal property assessments.
3. The Petitioner failed to show significant contrary evidence to specifically refute each of the 17 real estate assessments from which it appealed.
4. Alternatively, as to the manufacturing property, the Petitioner failed to show significant contrary evidence as to the aggregate value for the Ashley Plant complex.

Based on the foregoing,

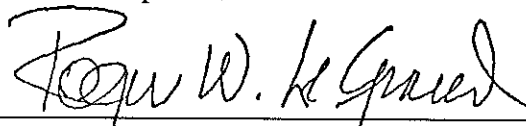
IT IS HEREBY ORDERED that the assessments in these cases are upheld and the Petitions for Review are dismissed.

Dated at Madison, Wisconsin, this 13th day of September, 2013.

WISCONSIN TAX APPEALS COMMISSION



Lorna Hemp Boll, Chair



Roger W. LeGrand, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin - 53705

NOTICE OF APPEAL INFORMATION

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES ALLOWED
FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS
RESPONDENT**

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternatively, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

- 1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue) within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.**
- 2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.**
- 3. The 30-day period starts the day after personal service or the day we mail the decision.**
- 4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.**

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or the Wisconsin Statutes. The website for the courts is <http://wicourts.gov>.

This notice is part of the decision and incorporated therein.