STATE OF WISCONSIN
TAX APPEALS COMMISSION

KERRY INC.,

Petitioner,

DOCKET NOS. 18-M-041
AND 18-M-248

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION AND ORDER

JESSICA ROULETTE, COMMISSIONER:[1]

The Commission conducted a trial in these cases in Madison, Wisconsin, on February 7-10, 2022, Commissioner Lorna Hemp Boll, presiding. The Petitioner was represented by Attorney Daniel Deveny of Fredrikson & Byron, P.A., Minneapolis, Minnesota. The Respondent, the Wisconsin Department of Revenue ("the Department"), was represented by Attorney Jenine E. Graves. Both parties filed post-trial briefs. Based upon the proceedings at trial, the exhibits received at trial, and the entire record, the Commission finds, concludes, and orders as follows:

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[1] This case was heard before Commissioner Lorna Hemp Boll. Following the trial but prior to the final decision, Commissioner Boll left the Commission. However, prior to her departure, Commissioner Boll reported to the Commission her impressions of the facts and testimony from the trial. In addition, it should be noted that Chair Kessler attended portions of the trial.

FINDINGS OF FACT

JURISDICTIONAL FACTS

1. Petitioner owns a dairy production business in Owen, Wisconsin (the "Property"). The parcel, identified as Parcel ID No.265.0366.370 and Computer ID No. 79-10-256-R000007873, consists of 22.13 acres of land and a structure of 121,279 square feet.

2. These cases involve Petitioner's objections to the Department's valuations of the Property as of January 1, 2017, and January 1, 2018.

3. Petitioner timely appealed the assessments to the Board of Assessors. The Board of Assessors upheld the assessments in its decisions dated December 20, 2017, and September 27, 2018, respectively. Petitioner timely filed Petitions for Review with the Commission. Those Petitions for Review were the subject of the trial in these cases.

4. The assessments and Petitioner's opinions of value were as follows:

Year	Assessed Value	Petitioner's Total Opinion of Value
2017	$3,690,000	$975,000
2018	$3,735,000	$975,000

MATERIAL FACTS

5. The Property structure was constructed over time, with the bulk of the present structure constructed in phases between the 1990s and the mid-2000s and was zoned as of the relevant assessment dates as I-S, Industrial Specialized.[2]

6. At the time of assessment, the Property was utilized by Petitioner as a dried and liquid food ingredient processing plant.

7. The highest and best use of the Property was its use as of the date of the assessment.

8. The overall weighted average age of the facility was 49 years according to Petitioner's witness, Mr. Edfors, and 25 years according to the Department. The parcel was improved with a 121,279 square foot industrial building which included a 75 foot tall open tower. The building was certified as a food processing facility by the United States Department of Agriculture (USDA) and a licensed dairy plant regulated by the Wisconsin Department of Agriculture, Trade and Consumer Protection. The building was not outfitted with sprinkler systems, but a fire suppression system was present in the towers to reduce the risk of explosion. The Main Campus was in fair condition.

9. The Property was not the subject of any recent sale. The parties agreed, and the Commission finds, that, in the absence of a recent sale, the sales

[2] No inference should be drawn from the use of the past tense in the description of the property and its buildings. Many, if not all, of the details surrounding the property continue to be true as of the date of this opinion, but for consistency, the Commission will use the past tense to indicate that the descriptions were accurate for the assessment years at issue in these appeals.

comparison approach (Tier 2 of the *Markarian* hierarchy[3]) was the appropriate method for valuing the Property.

10. The Property was located in the City of Owen, which had a population of 933 in 2018 and was in a very rural area. The Property consisted of a 22.13 acre lot, with the above-described building. The nearest interstate, I-94, was approximately 60 miles away. State Highway 29 was a 'nearby'[4] four-lane highway, which connected to State Highway 51 in the County. In Owen, primary land uses were single-family residential, as well as some retail and office, governmental institutional and light industrial land uses. In the immediate neighborhood, properties adjacent to the north and nearby to the property included a small light industrial building, a heavily wooded area, and the northwest part of the large Owen Pond 5. The south part of the pond was adjacent to the east of the property, beyond which was the north part of the small central business district. To the immediate south of the property were an office products store, small bank, small commercial building, vacant land, two houses, and a church. To the immediate southwest of the property were several houses and two small commercial buildings. Harding Street, a bidirectional two-lane road paved with asphalt, dead ended at the property. The property also had frontages along Lehnen Street and 3rd Street.

[3] See full discussion of the *Markarian* hierarchy beginning at page 22 of this decision.
[4] The distance to State Highway 29 and subsequently to State Highway 51 was never identified in more detail by either party. Based on the limits of the record, this appears to be less desirable than a location close to the interstate, but unremarkable for the current use.

11. Petitioner called an expert appraiser who held graduate degrees from both the University of Wisconsin-Madison (M.S. in Business) and the University of Chicago (M.B.A.) as well as a law degree from DePaul University. His experience involved practicing real estate law, appraising properties, and consulting on property valuation issues from zoning to tax appeals. Petitioner's appraiser had extensive experience, having valued many commercial properties in Wisconsin and Illinois.

12. The Department called two Certified Assessors who had many years of experience with assessment for the Department.

13. The parties accounted for property attributes in vastly different manners, which are difficult to compare.

14. The Department's assessor, Mr. Stepanek, determined that the Property's location was "just where it needed to be," so he overrode the Department's system to give it a 100% location residual, although the system generated only an 80% residual.

THE DEPARTMENT'S METHODOLOGY FOR VALUING THE OWEN PROPERTY

15. The Department valued the Property using a method employed for decades at the Department and which was examined closely in two prior written Commission decisions. *See Thermo Electron v Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-065, *Madison-Kipp Corp. v Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-250. The method has been referred to as a "building residual method," which it technically is. The method usually referred to by that name in the appraisal industry is a variation on the cost

approach; under that method, the appraiser first values the land as though vacant, then values the improvements using a replacement cost new methodology. In contrast, the Department employed a hybrid sales approach, in which the Department selects what it believes are comparable sales, subtracts off a value for just the land as if it were vacant, and then compares what is left, a residual which the Department terms "the improvement sale price" for the sale, to the improvements of the subject property. The Department then adjusts those residual values to make them comparable to the subject property's improvements. The Department weights the adjusted improvement-only portions of the sales to determine an estimate for improvement price per square foot of the subject property, which it then multiplies by the improved square footage of the subject property. Finally, it adds an amount it has estimated for the land as though vacant back in to produce a full value of the property.

16. The Department valued the Property in this manner for its 2015 assessment.[5]

17. In 2014, the Department (Mr. Stepanek, the assessor) conducted a site visit to view the Property in anticipation of its 2015 assessment. He then created a Sales Analysis Report (SAR)[6] (Ex. L) using four sales between 2011 and 2014, to determine the assessed value of the Property.

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[5] The Department reassesses properties through site visits and comparison with sales of similar properties every five years.

[6] The Sales Analysis Report (SAR) is the former name for what by the date of trial has come to be called the Sales Comparison Analysis Report (SCAR). This decision will refer to this document as both a SAR and a SCAR, depending upon the name in use at the time the report was generated.

18. Using four sales (less the estimated land value), the assessor determined a value of $3,316,961 for the Property improvements. He added $80,300 for the land for a total assessed value for 2015 of $3,397,281.

19. For assessments in the non-site-visit years, the Department modifies its site visit assessment to account for changes and improvements reported by taxpayers on MR Forms.[7] These changes are reported in the first quarter of the following year; for example, structural changes and improvements made in 2014 are reported in Q1 2015 and used for the January 1, 2015 assessment which is issued in Q2 2015.

20. For the Property for the years immediately following the 2015 assessment, the Department added the effects of improvements reported in the MR Forms to create the assessed values for 2016, 2017, and 2018.

21. Petitioner's 2015 MR reported improvements made in the amount of $843,062. The taxpayer suggested these changes would have a positive impact of $193,229 on the value of the Property. Petitioner's 2015 MR reported demolition of a roof at a cost of $195,000. The taxpayer suggested this change would have a negative impact of $195,000 reduction in the property value. The taxpayer's combined changes to the property would have resulted in an overall $1,771 reduction in the property value. The Department determined instead that the Property's value should be increased by $193,200 for January 1, 2016, as a result of work done in 2014. No changes were made to the portion allocated to the land. The full 2016 assessment was $3,676,700.

[7] MR forms are Manufacturing Real Estate returns filed with the Department of Revenue on an annual basis.

22. Petitioner's 2016 MR reported improvements made in the amount of $275,450. The taxpayer suggested these changes would have a positive impact of $69,501 on the value of the Property. The Department determined instead that the Property's value should be increased by $86,200 for January 1, 2017, as a result of work done in 2015. No changes were made to the portion allocated to the land. The full 2017 assessment was $3,690,900.

23. Petitioner's 2017 MR reported improvements made in the amount of $56,904 to the dry blend in mini lab, and $579,462 to the wastewater building. The taxpayer suggested the change to the dry blend in mini lab would have a positive impact of $14,226 on the value of the Property. The Department agreed, adding $14,200 to the Property's value for January 1, 2018, as a result of work done in 2017. Wastewater improvements are exempt in Wisconsin, and so the changes to the wastewater building were disregarded by the Department. No changes were made to the portion allocated to the land. The full 2018 assessment was $3,735,900.

THE DEPARTMENT'S IMPROVED COMPARABLE SALES

24. Each of the comparable sales relied on by the assessor in valuing the improvements had been "fielded" by a Department employee other than the assessor.[8]

[8] In fielding a sale, a Department employee typically visits and examines the property which was the subject of the sale, talks with the purchaser and seller, reviews available sale-related documents, and collects and documents sale data. The employee fielding the sale establishes a separate estimated value for the land, among other tasks. Although not a requirement, we note that the assessor did not personally inspect the properties used as comparable sales. The assessor also had no independent knowledge of the land-only values of the Sales but instead took those values from the Department's Sales Reports.

25. None of the Department's sales had a highest and best use of dairy or food processing. The Department's appraiser compensated for that difference by adjusting all the sales up by 10% for the Property's superior cleanliness and food quality standards.

26. Department's Sale 1, in Sauk City, Wisconsin, was used for manufacturing but was sold for retail in 2014. The assessor first subtracted out a land value from the sale of this parcel at a rate of $20,600 per acre. This land value was taken from the fielded information in the Department's database. The assessor had no independent knowledge or opinion concerning the value of the land. He did not know the details of how the land value was determined and what, if any, comparable sales were relied upon for determining the 2015 land value. He then divided the sale price by the improved square footage and adjusted that residual improvement value in comparison with the subject. He made upward adjustments to this sale for inferior location, height, size, site coverage, quality, and because the property was not a dairy processing facility. The Department made a downward adjustment for superior condition and office percentage. He weighted this sale at 25%.

27. Department's Sale 2, sold in 2012, was the property of a wood fabricator in Mt. Pleasant, Wisconsin, so it was also considered as being used for manufacturing. The assessor subtracted a land value from the sale of this parcel in the Racine area at a rate of $45,000 per acre. Again, this land value was taken from the land allocation listed in the Department's database, and the assessor did not have personal knowledge of how the value was determined. His adjustments to the residual included

upward adjustments for inferior location, height, and because the property was not a dairy processing facility. His downward adjustments reflected the sale property's superior condition, office percentage, and height. The Department made no adjustments for size, site coverage, or quality. This property was weighted at 20%.

28. Department's Sale 3 was a property sold in 2011 by a metal cabinet manufacturer for continued use in manufacturing in Menomonee Falls, Wisconsin. Again, the assessor subtracted out a land value, this time at a rate of $78,760 per acre, based on the value derived from the Department's database. His adjustments to the residual included upward adjustments for inferior height, site coverage, and because the property was not a dairy processing facility. His downward adjustments reflected the comparable property's superior condition and office percentage. The Department made no adjustment for location, size, or quality. This property was weighted at 32%.

29. Department's Sale 4, sold in 2014, was a property used for metal fabrication sold to an industrial chemical company in Oshkosh, Wisconsin. Again, the assessor subtracted out a land value, this time at a rate of $26,010 per acre, based on the value derived from the Department's database. His adjustments to the residual included upward adjustments for inferior condition, location, height, quality, and because the property was not a dairy processing facility. His downward adjustments reflected the comparable property's superior office percentage and size. The Department made no adjustment for site coverage. This property was weighted at 22%.

THE DEPARTMENT'S COMPARABLE LAND SALES

30. The Department did not create a study of land values in conjunction with the 2015 assessment; however, it created one for the trial.

31. The sales comparison for the land as vacant, completed in 2021 to prepare for the hearing in this appeal, compared the Property with four vacant land sales located in Clark County. The Property was 22.13 acres. The Department's four land sales were of parcels ranging from 4.8 acres to 33.8 acres. Sale 1 was a 4.8 acre parcel. Sale 2 was a 33.8 acre parcel. Sale 3 was a 6 acre parcel. Sale 4 was a 15 acre parcel. (Ex. 11)

32. Department's Land Sale 1 was 4.8 acres sold in May of 2014. The parcel is located in the Town of Thorp, and it was sold for use as a grocery store. The predominant use was described as commercial. The Department made a negative 25% adjustment to the per acre price for this sale, because the parcel was smaller than the Property, and smaller parcels generally have a higher per acre sale price. The Department made a positive adjustment to the per acre price for this sale because the parcel is located in a township, which is less desirable than the city location of the Property. The Department also made a positive adjustment to the per acre price because the Property is improved with access to utilities, while this sale was vacant land.

33. Department's Land Sale 2 was 33.8 acres sold in September of 2015. The parcel is located in the Town of Hixon. The predominant use was described as miscellaneous. The Department made positive adjustments to the per acre price for this sale for size, location, and improvements.

34. Department's Land Sale 3 was 6 acres sold in October of 2014. The parcel is located in the Town of Mead. The predominant use was described as miscellaneous. The Department made a negative adjustment to the per acre price for this sale for size. The Department made positive adjustments to the per acre price for this sale for location and improvements.

35. Department's Land Sale 4 was 15 acres sold in May of 2015. The parcel is located in the Town of Pine Valley. The predominant use was described as miscellaneous. The Department made negative adjustments to the per acre price for this sale for size and for water frontage, because this parcel was smaller than the Property, and because this parcel has frontage on the Black River, which would be attractive to buyers. The Department made positive adjustments to the per acre price for this sale for location and improvements.

36. The Department did not make specific adjustments to the Land Sales based on their zoning.

37. Using these four Comparable Land Sales, the assessor determined a value of $82,500 of just the land portion of the Property for 2014 and 2015.

38. The land portion of the Property was included in the assessment at issue in these appeals at $80,000, which constituted only about 2% of the total assessment.[9]

[9] The subtraction of the land from the full value of the Property for the purposes of comparing the Property to other sales may not have had a significant impact; however, we note that three of the Department's four improved comparable sales each had more significant land values, ranging from 12% to 32% of their full values, which the Department was subtracting out before performing its comparisons.

PETITIONER'S METHODOLOGY FOR VALUING THE OWEN PROPERTY

39. In contrast to the Department's building residual sales comparison method, Petitioner's appraiser applied a more traditional sales comparison approach in which he compared all aspects of sales he deemed comparable and adjusted the overall sales figure per square foot of each sale to reflect the attributes of the Property.

PETITIONER'S APPRAISER

40. Petitioner's appraiser signed his appraisal report with information indicating that he held a Wisconsin appraiser's license. Testimony indicated that Petitioner's appraiser did not hold a valid Wisconsin appraiser's license at the time he signed the report for this matter, although he had held one prior to signing the report and was awaiting the renewal of his license.

41. Petitioner's appraiser did not have a familiarity with some of the specific requirements for valuing manufacturing property for the purpose of assessment appeals in Wisconsin. For example, the Wisconsin Property Assessment Manual ("WPAM") requires that comps should not be vacant.

PETITIONER'S COMPARABLE SALES

42. Petitioner's appraiser introduced 13 comparable improved properties in support of his opinions of value. Only two sales, Sale 11 (April 2014) and Sale 12 (December 2013) would have been available for consideration at the time of the 2015 assessment. An additional five sales would have been available in time for a 2017 valuation, and a few more would have been in the Department's system in time for a 2018

valuation. The Department did not run a 2017 or 2018 SAR for presentation at trial, so there is no way of knowing what comparable sales it would have used, but the Department's assessors testified that they would not have used any of Petitioner's sales.

43. Petitioner's Sale 1 had been used for dairy related production and included two, one-story buildings, totaling 93,282 square feet, with an additional 6,200 square foot basement, with a weighted effective age of 29 years, in Monroe, Wisconsin. The property sold in December 2017 for $10.18 per square foot to a buyer who changed the property's use. It was zoned Light Industrial and sat on a trapezoidal 4.49 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location, physical characteristics, and size. He made an upward adjustment for expenditures required after purchase, land-to-building ratio, and age. His net adjustment of 15% resulted in an adjusted value of $11.71 per square foot.

44. Petitioner's Sale 2 included a vacant 74-year-old former cookie manufacturing plant with 23 additions, totaling 300,329 square feet, with buildings aged between 64 and 24 years old, in Ripon, Wisconsin. The property sold in September 2017 for $5.41 per square foot. It was zoned Industrial and sat on a relatively narrow, partly rectangular 37.74 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location, and land-to-building ratio. He made an upward adjustment for size and what he determined were the inferior market conditions associated with the sale of the property. His net adjustment of 30% resulted in an adjusted value of $7.03 per square foot. On cross-examination, the

appraiser testified that the land-to-building ratio should have been an upward adjustment and the inclusion of a negative sign in the grid was a typographical error. The appraiser further testified that this error would necessitate the recalculation of the price per square foot to provide a useful number for use as a comparable sale. On re-direct examination, the appraiser testified that a change in the value per square foot of this sale would have no impact on his ultimate conclusion as to the proper value of the Property.

45. Petitioner's Sale 3 was a vacant 47-year-old, 136,181 square foot building, one-story building previously used for light manufacturing, in East Troy, Wisconsin. This property sold in April 2017 for $12.48 per square foot. It was zoned General Industrial and sat on an approximately rectangular 9.65 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location and physical characteristics. He made an upward adjustment for expenditures required after purchase and land-to-building ratio. His net adjustment of -5% resulted in an adjusted value of $11.86 per square foot.

46. Petitioner's Sale 4 was a vacant, 163,128 square foot, former USDA certified food production and food distribution facility with three industrial buildings, in Seymour, Wisconsin. This property sold in March 2017 for $5.18 per square foot. It was zoned General Commercial/Industrial and sat on a trapezoidal 12.32 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location and physical characteristics. He made an upward adjustment for the land-to-building ratio and what he determined were the

inferior market conditions associated with the sale of the property. His net adjustment of 25% resulted in an adjusted value of $6.48 per square foot.

47. Petitioner's Sale 5 was a vacant 139,752 square foot, one-story, light manufacturing and warehouse building in Schofield, Wisconsin. This property sold in December 2016 for $7.16 per square foot after two years on the market to a buyer who changed the property's use. It was zoned General Industrial and sat on an irregularly-shaped, 6.88 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location, and physical characteristics. He made an upward adjustment for land-to-building ratio and what he determined were the inferior market conditions associated with the sale of the property. His net adjustment of 20% resulted in an adjusted value of $8.59 per square foot.

48. Petitioner's Sale 6 was a 70,400 square foot, one- and two-story building in operation as a dairy food production facility in Sheboygan, Wisconsin. This property sold in August 2016 for $9.23 per square foot. It was zoned Urban Industrial and sat on a rectangular 2.63 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location, physical characteristics, and size. He made an upward adjustment for land-to-building ratio and age. His net adjustment of -5% resulted in an adjusted value of $8.77 per square foot.

49. Petitioner's Sale 7 was a 263,198 square foot, multitenant, one-story food processing building in Sun Prairie, Wisconsin. This property sold in July 2016 for $6.35 per square foot. It was zoned Urban Industrial and sat on a trapezoidal 13.58 acre

parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location. He made an upward adjustment for physical characteristics and land-to-building ratio. His net adjustment of 20% resulted in an adjusted value of $7.62 per square foot. On cross-examination, the appraiser agreed that there should have been a positive adjustment for size, and the fact that no adjustment was made was an error. The appraiser further testified that this error would necessitate the recalculation of the price per square foot to provide a useful number for use as a comparable sale. On re-direct examination, the appraiser testified that a change in the value per square foot of this sale would have no impact on his ultimate conclusion as to the proper value of the Property.

50. Petitioner's Sale 8 was a 155,584 square foot manufacturing building in Menasha, Wisconsin. This property sold in June 2016 for $10.64 per square foot. It was zoned Heavy Industrial and sat on a rectangular 8.47 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location. He made an upward adjustment for physical characteristics and land-to-building ratio. His net adjustment of 20% resulted in an adjusted value of $12.77 per square foot.

51. Petitioner's Sale 9 was an eight section, one-story building with mezzanine, 25,938 square foot insulated and heated cheese processing and packaging plant, with 5,504 square foot production area, 7,940 square foot cooler area, 1,128 square foot office, and newer 2,700 square foot unheated storage buildings in Milladore, Wisconsin. This property sold in March 2016 for $11.57 per square foot. No zoning

information was provided, and it sat on an irregularly-shaped 2.89 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in size and age. He made an upward adjustment for location, physical characteristics, land-to-building ratio, and what he determined were the inferior market conditions associated with the sale of the property. His net adjustment of 10% resulted in an adjusted value of $12.73 per square foot.

52. Petitioner's Sale 10 was a three-building, one-story heavy manufacturing complex with a total footprint of 111,266 square feet in Portage, Wisconsin. This property sold in April 2017 for $11.01 per square foot. It was zoned Industrial and sat on a trapezoidal 5.09 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location. He made an upward adjustment for expected expenditures after purchase, physical characteristics, land-to-building ration, and what he determined were the inferior market conditions associated with the sale of the property. His net adjustment of 40% resulted in an adjusted value of $15.41 per square foot.

53. Petitioner's Sale 11 was a 57,000 square foot food processing facility in Waupaca, Wisconsin. This property sold in April 2014 for $4.04 per square foot. It was zoned Light Industrial and sat on a rectangular 3.56 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location and size. He made an upward adjustment for physical characteristics, land-to-building ratio, and what he determined were the inferior market

conditions associated with the sale of the property. His net adjustment of 40% resulted in an adjusted value of $5.64 per square foot.

54. Petitioner's Sale 12 was a 141,140 square foot light manufacturing building in Oostburg, Wisconsin. This property sold in December 2013 for $7.79 per square foot after four years on the market. It was zoned General Industrial and sat on an irregularly-shaped 5.99 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location and age. He made an upward adjustment for physical characteristics, land-to-building ratio, and what he determined were the inferior market conditions associated with the sale of the property. His net adjustment of 25% resulted in an adjusted value of $9.74 per square foot.

55. Petitioner's Sale 13 was a vacant 100,000 square foot cheese product processing plant, with a restrictive covenant precluding future use for dairy processing, in Fond du Lac, Wisconsin. This property sold in December 2018 for $11.00 per square foot. It was zoned General Business and sat on an irregularly-shaped 5.46 acre parcel. The appraiser adjusted the sale price downward based on his judgment that the building was superior to the subject property in location and physical characteristics. He made an upward adjustment for age and what he determined were the inferior market conditions associated with the sale of the property. His net adjustment of 15% resulted in an adjusted value of $12.65 per square foot.

56. Petitioner's appraiser used an erroneous dollar amount for his Sale 1, but he corrected that error well in advance of trial.

57. Larger properties are typically priced lower per square foot so they need to be adjusted upward to compare to the Property. Petitioner's appraiser conceded an error in failing to adjust upward Sale 7 (236,000 square foot) and by inference also Sale 13 (238,000 square foot) due to those parcels larger size as compared to the 121,000 square foot Property.

58. Properties with larger land-to-building ratios are typically priced lower per square foot, so they need to be adjusted upward to compare to the subject property. Petitioner's appraiser conceded an error in adjusting Sale 1 (land-to-building ratio 5.5) downward instead of upward when comparing to the Property (ratio 2.1). There are also several sales with smaller ratios which are adjusted upward and one with the same ratio as the Property, which was also adjusted upward.

59. At trial, the Department presented SCARs for 2017 and 2018, using various combinations of Petitioner's Sales.[10]

PARTIES' CONSIDERATION OF LOCATION AND LOCATION-RELATED ATTRIBUTES

60. The Department's witnesses testified that their location adjustments only took into account the geographic location. This explanation makes the separate land valuation somewhat more palatable, assuming all other land considerations are taken into account in other adjustments. However, none of the Department's Sales show

[10] This exercise was not done to determine a valuation but to show that most of Petitioner's Sales required large adjustments, which the Department argued indicated they were not good usable comparable sales. The Assessor for the Department, in the data he entered into the SCARs, added manual gross adjustments of 30-65%, mostly up, for things he had not adjusted for in his own report for the Property.

adjustments for any attributes which would take into account the type of lot the structure sits on, the shape of the lot, whether it is on a hill or in a valley or at an intersection, ease of ingress or egress, whether there is ample and/or practical land space for expansion, zoning, parking and other paved areas.

61. In its study of Petitioner's Sales, the Department did adjust one property (upward) for small site coverage and adjusted all properties (all upward) to account for inferior layout and design, which may have taken parcel land aspects into account. On cross-examination, the Department's assessor agreed a purchaser is not buying land and improvements separately but is purchasing a property as a whole.

OPINION

This case involves the assessment for property tax purposes of a dried and liquid food ingredient manufacturer in Owen, Wisconsin. The property owner, Petitioner Kerry Inc., challenged the Department's property tax assessment for the years 2017 and 2018.

LEGAL STANDARDS

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.
>
> (2) The assessor, having fixed a value, shall enter the same opposite the proper tract or lot in the assessment roll, following the instruction prescribed therein.
>
> (a) The assessor shall segregate into the following classes on the basis of use and set down separately in proper columns the values of the land, exclusive of improvements, and ... the improvements in each class ...

The WPAM sets forth a three-tiered methodology for assessing real estate property value: (1) First Tier - Evidence of a recent arm's-length sale of the subject property is the best evidence of full value. (2) Second Tier - If the subject property has not been recently sold, then an assessor must consider sales of reasonably comparable properties. (3) 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 rely on one of the third-tier assessment methods. WPAM, Ch. 7;[11] *Nestle USA, Inc., v. Dep't of Revenue*, 2011 WI 4, ¶ 401-403, 331 Wis. 2d 256, 795 N.W.2d 46, citing *Markarian v. City of Cudahy*, 45 Wis. 2d 683, 686 (1970).

In Wisconsin, the parties must adhere to this *Markarian* hierarchy. If the property itself has not recently been sold, the next best method of proving value is the comparable sales method. This property has not recently been sold. Both parties believe

[11] In the 2015 WPAM, that is Chapter 7; in 2017 and 2018, the WPAM is organized differently and that discussion is in Chapter 9. There are no substantive changes to the language used in describing approaches to valuing land and improvements between the different editions of the WPAM in effect during any of the dates that are relevant here.

that sufficiently comparable sales existed and have presented evidence using a comparable sales approach to demonstrate the value of the Property.

The burden of proof is a two-step process. First, as noted, the Department enjoys a presumption of correctness. The taxpayer bears a heavy burden to show error in the assessments. Should the taxpayer overcome that burden, the taxpayer continues to carry the burden of persuasion; that is, the taxpayer must show that its opinions of value are more credible than those asserted by the Department. *ConAgra Foods Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-960 (WTAC 2015).

A. Presumption of Correctness

Assessments by the Department are presumed to be correct, and the burden is upon the taxpayer to prove by clear, convincing, 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 any credible evidence that may support the assessor's valuation in any reasonable view, the valuation must be upheld. *Universal Foods Corp. v Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-316 (WTAC 1997).

In computing an assessed value, the Department's assessor valued the land and improvements separately in 2015. To value the improvements, the Department's assessor chose four sales and, in each case, subtracted from the sale price an estimated value of the land. The result was what the assessor referred to as "the improvement sale price," a residual value he believed was the portion of the comparable transaction sale price attributable to the improvements only. He then adjusted the remaining value for

various factors to arrive at the value for the Property improvements. He then valued the land separately by imagining the improved parcel was vacant and choosing four sales of vacant land which he considered comparable to the land portion of the Property. He then made adjustments to those comparable sales to determine the value of the land. Finally, he added his improvement value and his land value to arrive at the total assessed value for the Property for 2015.

Additional assumptions and computations were necessary to adjust the 2015 valuation to produce valuations for 2017 and 2018. For each of those years, the Department reviewed the Petitioner's MR Forms and made more estimates, this time to find figures by which to increase the 2015 assessed value. The parties do not agree to the accuracy of the annual increases adopted by the Department.

Petitioner claims that the Department's assessments are erroneous and do not properly arrive at the fair market value of the parcel because, among other things, the "building residual method" (the method is more accurately described as a building abstraction method, where the improvements are artificially separated from the property for valuation) as a sales comparison approach to value the property is not an acceptable appraisal method under applicable Wisconsin statutes, the WPAM, or generally accepted professional appraisal practices. This matter was discussed in detail in the Commission's Decision in *Thermo Electron v Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-065. The Department continues to argue that it would be difficult to change a method they have been using for 30 years and that using vacant land comparable sales keeps land values more uniform. This latter argument ignores any uniqueness or non-uniformities of a

parcel which may increase or decrease a property's appeal to buyers. Just as a family of competitive swimmers may pay more for a house with a swimming pool, a busy successful food-processing company will pay more for a food-quality facility; it may also prefer several driveways, or a large parking lot with easy access, or a loading area which is not on a slope. The assessed value is a full market value of what that willing buyer would pay for the full property. If a portion of that price must be entered into the tax rolls as a land value, that can be separated out later, but the whole property is what a buyer is bargaining for and purchasing.

THE USE OF THE BUILDING RESIDUAL METHOD – BY AND OF ITSELF – IS NOT SUFFICIENT TO OVERCOME THE PRESUMPTION OF CORRECTNESS

The Petitioner's Initial Post-Trial Brief dated April 12, 2022 states, at page 18 as follows:

> The Commission's *Thermo Electron* Decision was rendered in April 2016. The Department has chosen to defy that decision by maintaining the same unreliable methodology to perform its sales comparison analyses. In this case, the Department specifically continued to rely on an underlying building residual analysis in setting the assessments of the subject property in 2017 and 2018. As set forth below, there are numerous other reasons why the presumption of correctness has been overcome. However, following the Commission's extensively considered and well-founded decision in *Thermo Electron* provides a straightforward basis to reject a methodology that the Commission has already resoundingly rejected. The application of *Thermo Electron is sufficient*, albeit not nearly the exclusive basis, *to dispatch with the presumption of correctness*. [Emphasis added.]

The Petitioner's brief appears to assert that the Department's use of the "building residual method" – by and of itself – invalidates the Department's 2015 SAR

and therefore *automatically* overcomes the presumption of correctness. However, the Department has been utilizing this method for decades. During that period, only two Commission decisions have addressed the use of this method - *Madison-Kipp Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-250, (WTAC 1991) (*Madison-Kipp*), *aff'd Dep't of Revenue v. Madison-Kipp Corp.*, Wis. Tax Rptr. (CCH) ¶203-380 (Cir. Ct. 1992) and *Thermo Electron v. Wisconsin Department of Revenue, Wis. Tax Rptr. (CCH)* ¶ 402-065 (WTAC 2016) (*Thermo Electron*). *Thermo Electron* was also appealed by the Department to the circuit court, which affirmed the Commission decision without a written opinion.

Both *Madison-Kipp* and *Thermo Electron* decisions reviewed the use of the "building residual method" and found it inherently unreliable, however, neither disallowed the use of the method by the Department.

The Commission's decision in *Thermo Electron* addressed a similar assessment of manufacturing property. In that case, the Department assessed the subject by first assigning a value to the land, and then establishing a value for the improvements. The Department also presented recent sales of other properties. However, those recent sales were not zoned the same as the subject property and contained other problems making them unreliable as "comparable sales." The Commission criticized the use of the "building residual method" but also noted the problems with the property sales the Department had presented as comparable sales. The Commission determined the Petitioner had overcome the presumption of correctness and met the burden of persuasion and therefore found in the Petitioner's favor. Thus, in *Thermo Electron*, the Commission provided the following Conclusions of Law:

1. The Department's assessment of the Main Campus Parcel contained error sufficient to overcome the presumption of correctness.

2. The Department's use of a "building residual" method separately valuing the land and improvements of the Main Campus Parcel, was inconsistent with applicable Wisconsin law, the Wisconsin Property Assessment Manual [WPAM], and generally accepted professional appraisal practices.

3. All of the Department's choices of comparable land sales were invalid under the principle of substitution because all of them were zoned for completely different uses and were sold for uses impermissible for the Main Campus parcel.[12]

The first Conclusion of Law includes both the second and third Conclusion of Laws as the "error[s]" to which it refers - indicating that the presumption of correctness was overcome based upon the errors of (1) using the "building residual method" *and* (2) utilizing land sales as comparable which were not valid because those parcels were zoned for completely different uses and sold for uses impermissible for the property at issue. The combination of these two components is noted as sufficient to overcome the presumption of correctness. Nowhere in *Thermo Electron* is it stated that the Department's use of the "building residual method" - by and of itself - automatically results in overcoming the presumption of correctness. Instead, *Thermo Electron* states the department's use of the "building residual method" *combined with* problematic comparable sales, overcomes the presumption of correctness.

Thermo Electron was appealed to the circuit court by the Department. In the transcript from that proceeding, the Department explained it had appealed to address

[12] *See Thermo Electron*, at 20.

Conclusion of Law number two.[13] The circuit court issued an oral decision, simply affirming the Commission decision. The transcript of the circuit court proceeding indicates the judge was not deciding that the Department's use of the "building residual method" - by and of itself - automatically overcomes the presumption of correctness. Judge Peter C. Anderson affirmed the Commission decision and echoed the concern regarding the application of the "building residual method" in that specific instance:

> I don't read their [Tax Appeals Commission] decision as saying it's [the "building residual method"] absolutely forbidden, but at least, in this case, it really - first of all they had serious questions about it, and in this case, it really didn't work out, and this was the better value. That would be my view of it. [page 38, lines 2-6]
>
> That will be my decision; *that the court does not need to reach the question of the lawfulness of the building residual method to assess manufacturing property in Wisconsin in all cases*, but can and does affirm the decision of the Tax Appeals Commission as supported by substantial evidence consistent with the law and in the Commission's discretion, and it will just be an affirmance. [lines 17-24, page 39][Emphasis added].

See Wisconsin Dept. of Revenue v. Thermo Electron and Wisconsin Tax Appeals Commission, 16CV1282, transcript of October 31, 2016 hearing.

Based upon the above, the Commission finds neither the Commission's *Thermo Electron* decision nor the circuit court order affirming the Commission concludes that use of the "building residual method" - by and if itself - overcomes the presumption of correctness.

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[13] *See Wisconsin Dept. of Revenue v. Thermo Electron and Wisconsin Tax Appeals Commission*, 16CV1282, transcript of October 31, 2016 hearing at 7.

This go-round the Department argues that the WPAM allows for any form of valuation approved by numerous sources including the International Association of Assessing Officers (IAAO). Their proffered methodology of valuing industrial properties is as follows: "Improved industrial properties are valued by using a two-step procedure for processing sales data. Independent site value is estimated, and the contributory value of the improvements calculated." Diane M. Ange et al., *Property Assessment Valuation*, (3rd ed. 2010) at 218.[14] While that method may not be the best, because it is inferior to valuing the property as a whole, it is an acceptable method. Therefore, the use of this method does not *automatically* overcome the presumption of correctness. The use of the method may be used as a factor in determining whether the presumption of correctness has been overcome, but the wholesale argument it nullifies the Department's assessments is not persuasive.

We find that the Department's method is inferior to the valuation of the property as a whole. Not only does it not take unique land/parcel factors in account, but it also multiplies uncertainty. Rather than computing one estimated value, the Department's method requires numerous steps, each one producing more opportunity for estimation error. The sale price must be broken into two separate values. The sale price is reduced by the removal of an estimate of the value of just the land, which is valued with the unrealistic assumption that the land is vacant. The land value that is removed is not always based on a SAR which might account for the attributes of the

[14] The Department provided an excerpt of this book as Exhibit 13.

property but is usually an estimate of "the market value of land . . . in that part of the state or our district."[15] The modified sale price is then divided by the square footage and that result is used as a basis for the Sales (Comparison) Analysis Report (SAR, SCAR), the grid from which the opinions are presented. In the SAR, percentage adjustments are determined and multiplied only against the ratio of (sales price less an estimate of land value)/(square footage of the structure), then an estimate of land value is added back to the adjusted sale price per improved square foot figure. Because each operation involves estimates, each successive mathematical operation decreases the reliability of the final result.

From a statutory standpoint, the Department continues to point to Wis. Stat. § 70.32(2)(a). As we noted in *Thermo Electron*, a requirement that the assessor place separate values for land and improvements on the assessment rolls does not mean that the land must be separately valued and subtracted out after the full value is determined.

THE USE OF THE "BUILDING RESIDUAL METHOD" IS CONSISTENT WITH APPLICABLE WISCONSIN LAW, THE WPAM, AND GENERALLY ACCEPTED PROFESSIONAL APPRAISAL PRACTICES

WISCONSIN STATE LAW

Section 70.32(2)(a) of the Wisconsin state statutes directs the Department to separate out the value of (1) land and (2) improvements to land. The statute does not require that the separating of values be done at any particular time during the assessment process, but the statute does require the values to be so listed on the assessment rolls. The

[15] Commission trial transcript, p. 146, lines 5 – 7.

statute neither prescribes nor proscribes a particular methodology for determining those values as distinct from one another. The WPAM outlines several approaches that can be taken to determine the value of land and the value of improvements to the land. These are most directly addressed in the chapter[16] which focuses on residential property, however there is nothing in the chapters applicable to manufacturing property which calls for such land to be valued using a different methodology. Although Wis. Stat. § 70.32(2)(a) requires the Department to separate out the values of land and improvements, this may be an archaic requirement and does not appear to serve any particular governmental or public interest purpose. Nonetheless, it is a statutory requirement with which the Department must comply.

Not only is there no prohibition of using the "building residual method" in Wis. Stat. § 70.32(2)(a), there is no such prohibition in Wis. Stat. § 70.995, which addresses the specific assessment of manufacturing property. Finally, as explained above, neither prior Commission nor circuit court decisions prohibit the use of the "building residual method."

THE WPAM AND GENERALLY ACCEPTED PROFESSIONAL APPRAISAL PRACTICES

The argument that the "building residual method" is not a method specified in the WPAM is simply incorrect.

The WPAM states, at page 1-1, as follows:

[16] In the 2015 WPAM, that is Chapter 8; in 2017 and 2018, the WPAM is organized differently and that discussion is in Chapter 12. There are no substantive changes to the language used in describing approaches to valuing land and improvements between the different editions of the WPAM in effect during any of the dates that are relevant here.

Professionally Accepted Appraisal Practices

> In 1991, Wisconsin Act 39 changed sec. 70.32 Wis. Stats., to require that property be assessed according to professionally accepted appraisal practices. This language applies directly to Wisconsin's assessment professionals. Wisconsin assessors may look to national and international standards of practice for guidance on professionally accepted appraisal practices. The International Association of Assessing Officers (IAAO) also prescribes standards and practices specifically for assessors.
>
> The IAAO was one of the founding members of the Appraisal Foundation and continues to be represented by that organization. The efforts of the Appraisal Foundation and the IAAO continue to be in concert, including the importance of providing USPAP standards that govern professional appraisal and assessment practices.

The IAAO publication *Property Assessment Valuation*, states as follows:

> Improved industrial properties are valued using a two-step procedure for processing sales data. Independent site value is estimated, and the contributory value of the improvements is calculated.

See Diane M. Ange et al., *Property Assessment Valuation*, at 218, (3rd ed. 2010).

Furthermore, Chapter 12 of the WPAM specifically describes one potential method for determining land value, which is concludes with this sentence: ***Land value is calculated as a residual after the requirements of labor, capital, and management are satisfied.*** (WPAM 12-11, 2022; Emphasis added.[17]) Although the section is titled "Cost of Development Method," it is clear that this is another way of describing the same process.

[17] This language is identical in all editions of WPAM dating back to 2015, although it is located in Chapter 8 in the 2015 and 2016 editions, and moved to Chapter 12 beginning in 2017. WPAM editorial records indicate that the section was last edited in 2011.

Based upon the above, the Commission concludes the use of the "building residual method" is not inconsistent with applicable Wisconsin law, the WPAM, and generally accepted professional appraisal practices. While it may not be the *best* appraisal method available, the Commission concludes the Department's use of the "building residual method" - by and of itself - does not overcome the presumption of correctness. However, the Department's lack of persuasive comparable sales *combined* with the use of the "building residual method" may certainly overcome the presumption of correctness.

We agree with the reasoning in *Thermo Electron* and *Madison-Kipp* but decline to extend the holdings of either case as far as petitioner urges. The Commission continues to hold that "[w]hen a purchaser and seller agree to a price in an arm's-length transaction for the sale of a fee simple interest in improved property, that sale price provides an objective and reliable indication of value. . . . In such a transaction, the purchaser is not buying a parcel of vacant land and separately purchasing the building and improvements. The land and buildings come together, for better or for worse, and the purchaser takes that into account when negotiating the purchase price." *See Thermo Electron.* At trial, the Department's own witnesses agreed to these principles.

As we wrote above, the more an assessor creates subdivisions of an assessed value which are estimated and later re-combined, the more unreliable the resulting value is. We wrote in *Thermo Electron*:

> Adjusting comparable sales to the subject property, as assessors and appraisers must do when using the comparable sales approach, interjects a great deal of subjectivity into the process, and those adjustments are often some of the most contentious points in the manufacturing property valuation

> cases that come before the Commission. As noted in *Madison-Kipp*, subtracting an estimated value of the land before making value adjustments to the improvements and then valuing the land by comparison to adjusted vacant land sales, adds another layer (or perhaps two or three layers) of subjectivity.[18]

Because the Department did not use an ideal method of valuing the Property and relied on dated sales at trial (the 2011 sale relied upon for the 2017 and 2018 assessments appears particularly dated), Petitioner has shown errors in the Department's assessment sufficient to overcome the presumption of correctness. Having cleared this first hurdle, Petitioner must next meet its burden of persuasion to show that its opinion of value is more credible than that of the Department. We do not believe Petitioner has met the burden.

B. Burden of Persuasion

CREDIBILITY OF DEPARTMENT'S EVIDENCE

Regardless of the Department's methodology, its trial evidence was lacking in credibility to the extent that every layer of estimates decreased its accuracy. Although not required, it would have been helpful to have a SAR run for the purpose of this trial. It would have assisted the Commission in determining the 2017 pool of available acceptable sales. In addition, it would eliminate the reliance on sales from 2011 and 2012, which decreased the credibility of the Department's valuation.

The 2015 value was computed using sales as old as 2011 for a valuation: it was found by breaking the property apart, valuing the pieces separately, then putting the

[18] See *Thermo Electron* at 31.

estimated values of the pieces back together. That estimate was then adjusted further for ballpark estimates of the impact of changes made in the ensuing years. The Commission received little to no evidence or testimony as to the basis for the changes attributable to the data reported in the MRs for each subsequent year.

Although the Department's methods may be acceptable for developing values for assessments, as trial evidence, the Department's calculations were sorely lacking. Rather than resting on stale data from Sales many years earlier, the Department could have run a 2017 and/or 2018 SCAR for trial using more recent and possibly more relevant sales; the Department ran SCARs to critique Petitioner's Sales but chose not to do so to support their own assessment. Petitioner's method is much more direct and, therefore, potentially more reliable.

While the Department's value methodology is suspect, in this case, the land is such a small contributor to the full value that the flawed methodology does not have a significant bearing on the result. Moreover, the Department's study, while dated, incorporates choices of comparable sales which are more similar to the Property.

As for comparability, we do note that none of the Department's four Sales are food-processing properties. It is also somewhat troubling that the Department's witnesses had no explanation for not choosing even one of the five possible sales from their computer-generated list of candidates which appeared to have higher correlations to the Property. Each of those five properties was flagged by the Department's system as more comparable to the Property, each had square footage closer to that of the Property, each had much lower sales price per square foot than the Sales chosen, and all five were

more recent than the 2011 sale ultimately relied upon by the Department at trial. *See* Ex. L-1. Finally, although the Property may be near (neither party elicited testimony as to who or where the suppliers were) the raw material suppliers, there was testimony that the Property was 60 miles from the interstate, which cannot be ideal, so location should have been less than 100% in the Department's valuation process.

CREDIBILITY OF PETITIONER'S EVIDENCE

Petitioner's appraiser applied a more traditional sales comparison approach in which he compared all aspects of sales he deemed comparable and adjusted the overall sales figure per square foot of each sale to reflect the attributes of the Property. This method has vastly fewer instances of adding and multiplying estimates with estimates, which intuitively should yield a more reliable estimate of value.

The WPAM standards require that property be valued according to its highest and best use, and both parties' experts agreed that is the standard. However, Petitioner's appraiser gave speculative testimony about what use a buyer might make of several of the sales he used in his analysis.

Many of Petitioner's appraiser's Sales were either not comparable, had issues affecting the sales price, or both. Sale 13 occurred in December of 2018 and could not have been used to generate a value for either tax year at issue here. Sales 1, 2, 3, and 10 occurred in 2017, and could not have been used to generate a value as of January 1, 2017, the first year at issue here. Additionally, Sales 3, 5, 8, and 12 did not not include food grade facilities. Sales 1, 2, 3, 4, 6, 9, and 10 were all vacant for at least six months prior to sale. Sales 2, 4, and 9 all changed use after their sale to a non-food grade use. Sale

7's sale price was based on below market rent. Sale 11 reflected the sale price of a second sale of the property within a year: the sale price for the sale used by Petitioner's expert was significantly lower than the previous sale price, which reflected that the auction buyer had stripped the property of metal. Finally, Sale 13 was of a property that had a restrictive covenant precluding its continued use as a food grade facility and which had been acquired by a municipality for use as a park, both factors which made the sale less useful as a comparable sale of a food grade facility. Petitioner's appraiser prepared a narrative for each of his Sales and a chart showing adjustments he made for certain criteria, along with the overall percentage adjustment for each comparable sale. The chart contained mathematical errors, which did result or should have resulted in material differences to his opinions of value. Only some of these errors were corrected before or at trial, and Petitioner's appraiser did not adjust his ultimate opinion of the value of the Property in response to any of the errors.

Petitioner's appraiser's adjustments were less credible than those of the Department. Every one of his 13 Sales was adjusted downward for superior physical characteristics, although some were in apparently remarkably poor condition, and many were of the same "checkerboard" piecemeal design as the Property. Twelve of the thirteen Sales were adjusted downward for superior location. One obvious error was that all Sales were adjusted upward for site coverage, with the exception of one which the appraiser testifies should also have been, even though some had higher and some had lower site-coverage ratios as compared to the Property. Another error was evident where two Sales were not adjusted appropriately for their much larger size. Because the highest

and best use was food-processing, it was an error that none of the non-food-processing Sales were adjusted up for inferior cleanliness standards. These types of errors were extremely damaging to the credibility of Petitioner's value.

Also affecting Petitioner's appraiser's credibility were questions about Petitioner's appraiser's licensure. As noted above, Petitioner's appraiser signed his appraisal report with information indicating that he held a Wisconsin appraiser's license. Testimony indicated that Petitioner's appraiser did not hold a valid Wisconsin appraiser's license at the time he signed the report for this matter, although he had held one prior to signing the report and was awaiting the renewal of his license. There is no requirement in Wisconsin law for an individual to hold a valid state appraiser's license to value property for the purposes of disputing an assessment for taxation in Wisconsin. Given the extensive experience and educational background of Petitioner's appraiser, the Commission did not find the issue of whether the state appraisal license was current to be overly concerning. It was of greater concern to the Commission that Petitioner's appraiser did not have a familiarity with some of the specific requirements for valuing manufacturing property for the purpose of assessment appeals in Wisconsin.

The Petitioner's appraiser also provided testimony about potential adaptive reuse of the sales he used as comparable sales in his analysis. The WPAM standards require that property be valued according to its highest and best use, and both parties' experts agreed that is the standard. However, Petitioner's appraiser muddied the waters significantly with speculative testimony about what use a buyer might make of several of the sales he used in his analysis. The lack of clarity around whether Petitioner's

appraiser truly used the highest and best use standard set forth in the WPAM reduced the credibility of his conclusion as to the Property's value. Finally, at trial, Petitioner described the condition of the Main Campus as below average and did provide some photos of disintegrating concrete and other structural issues. In its post-trial brief, the Petitioner agreed with the Department that the building is in fair condition. This change adds another layer of unreliability to the Petitioner's proposed valuation of the subject property.

WEIGHING OF THE EVIDENCE

While neither side's valuation evidence was ideal, the Petitioner's evidence was less credible for several reasons. Therefore, Petitioner has not met the burden of persuasion to show that its opinion of value is more credible than the assessed value determined by the Department. Based on the testimony and documentary evidence presented at trial, we suspect that the true fair market value of the Property lies somewhere between the Department's assessed value and the Petitioner's appraised value, but there is no authority for the Commission to simply "split the difference" between the values submitted. Accordingly, we must uphold the assessments of the Department.

CONCLUSIONS OF LAW

1. The Department's use of the building residual method is consistent with applicable Wisconsin law, the Wisconsin Property Assessment Manual, and generally accepted professional appraisal practices, though it does not appear to be as reliable as the first two tiers of the *Markarian* hierarchy.

2. The Department's use of a building residual method, separately valuing the land and improvements, fails to consider land aspects which affect the value of the structure. This method also involves many additional steps which diminishes its reliability. When combined with the age of the comparable sales, and other errors noted in this decision, the use of this method in this case was not reliable to maintain the presumption of correctness.

3. The Department's assessment of the Owen Property contained error sufficient to overcome the presumption of correctness.

4. Of the 13 Sales used by Petitioner, none were reasonably comparable to the Owen Property.

5. Petitioner's valuation of the Owen Property was not more credible than the assessment value presented by the Department; thus, Petitioner has not met its burden of persuasion.

ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that the Department's assessments for 2017 and 2018 are upheld and the Petitions are dismissed.

Dated at Madison, Wisconsin, this 21st day of November, 2022.

WISCONSIN TAX APPEALS COMMISSION

Elizabeth Kessler, Chair

Jessica Roulette, Commissioner

Kenneth Adler, Commissioner

ATTACHMENT: **NOTICE OF APPEAL INFORMATION**

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

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. Alternately, 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 Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier,** 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 *https://wicourts.gov*.

This notice is part of the decision and incorporated therein.