

STATE OF WISCONSIN
TAX APPEALS COMMISSION

HORMEL FOODS CORP.
One Hormel Place
Austin, MN 55912,

DOCKET NOS. 01-M-207
and 02-M-283

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

DON M. MILLIS, COMMISSION CHAIRPERSON:

These matters came before the Commission for trial on December 4, 5, and 12, 2002, in Madison. Both parties have submitted post-hearing briefs. Petitioner is represented by Robert Hill and Associates, Ltd, by Attorney Robert A. Hill, and Michael Best & Friedrich, LLP, by Attorney Robert L. Gordon. Respondent is represented by Attorney Veronica Foldstad.

Based on the evidence received at trial, the submissions of the parties, and the entire record in these matters, the Commission finds, concludes, and orders as follows:

FINDINGS OF FACT

Beloit Plant

1. Petitioner operates a large food processing plant at 3000 Kennedy Drive in the City of Beloit (“Beloit Plant”) that is the subject of these proceedings.

2. The Beloit Plant improvements are located on a 27-plus-acre parcel located in the Beloit Industrial Park (“Beloit Plant Parcel”). The Beloit Industrial Park is located adjacent to the intersection of Interstates 39 and 90 and Interstate 43.

3. The Beloit Plant Parcel is zoned H-2 Heavy Manufacturing. This zoning classification includes manufacturing, industrial, and warehouse uses.

4. The parties have stipulated that for purposes of this proceeding: (1) the value of the Beloit Plant Parcel is \$553,700, (2) the Beloit Plant improvements consist of 334,000 square feet; and (3) the average effective age of the Beloit Plant improvements is 26 years.

5. The Beloit Plant improvements consist of six buildings or additions built over a period of years.¹

6. The overall condition of the Beloit Plant is good.

Primary Food Processing Area

7. The primary food processing area of the Beloit Plant consists of 86,180 square feet constructed in 1973 and a 32,552-square-foot addition built in 1982.

¹ The parties have stipulated that the outcome of this proceeding shall govern the valuation of the Beloit Plant as of January 1, 2001, and January 1, 2002. Unless otherwise specified, all facts pertain to these two valuation dates.

Roughly half of the primary food processing area is kept at temperatures ranging from – 10 degrees F to 50 degrees F.

8. A substantial portion of this refrigerated area is kept at 34 degrees F and is used primarily for food processing. The remainder of the refrigerated area consists of six cold storage areas: (1) two areas are kept at 50 degrees F, (2) one area is kept at 38 degrees F, (3) one area is kept at 34 degrees F, and (4) two areas are kept at –10 degrees F.

9. The two areas that are kept at –10 degrees F are the only two areas of the Beloit Plant that are equipped as freezer space.² The total square footage of these two areas is slightly less than 10,000 square feet.

10. The remainder of the primary food processing area is kept at normal room temperature and is almost entirely used for food processing.

11. The primary food processing area is divided into approximately 20 separate rooms or areas, most of which are separated by walls made in part or entirely of concrete.

12. The reason for constructing internal walls in the primary food processing area partially or entirely out of concrete is to protect the walls from forklifts moving raw material and product, and so that they can withstand the daily cleansing and sanitation required by federal law in the food processing area.

² Unless otherwise specified, refrigerated areas with a temperature greater than 32 degrees F shall be referred to as cooler space and refrigerated areas with a temperature of 32 degrees F or lower shall be referred to as freezer space.

13. Steel columns and beams, typically found in distribution warehouses, do not work well in food processing areas because of the corrosion that accompanies frequent cleaning that is required in such areas. Moreover, steel materials would have to be sandblasted and repainted frequently to comply with federal regulations forbidding paint from chipping in a food processing area.

14. The primary food processing area of the Beloit Plant is equipped with sloped floors leading to floor drains.

15. The primary food processing area also contains numerous items of heavy machinery and equipment used to process and can food.

Warehouse Area

16. The warehouse area of the Beloit Plant consists of 142,362 square feet constructed in 1973 and a 50,670-square-foot addition built in 1978.

17. The 1978 warehouse addition is virtually free of internal walls.

18. The remainder of the warehouse area consists of storage areas, but also contains several pieces of machinery and equipment that are used for food processing and canning. Some of the floors in this portion of the warehouse area are sloped for drainage.

Petitioner's Acquisition of The Turkey Store

19. On February 24, 2001, petitioner acquired 100 percent of the issued and outstanding capital stock of The Turkey Store by establishing a special purchase subsidiary that purchased the stock of Jerome Foods, Inc., d/b/a The Turkey Store

Company. The special purchase subsidiary then changed its name to The Turkey Store and was merged into petitioner.

20. One of the assets owned by The Turkey Store, both before and after the above-described transaction, was a food processing plant in Barron, Wisconsin, that is approximately 374,000 square feet in size (“Barron Plant”).

21. Petitioner’s total cash outlay for the stock of The Turkey Store was \$335,000,000. Petitioner reported to the Internal Revenue Service that the value of gross assets involved in The Turkey Store transaction was \$466,676,000.

22. Title to the Barron Plant was not conveyed as a result of The Turkey Store transaction, and no real estate transfer return was filed and no real estate transfer fee was paid.

23. In an effort to comply with the requirements of the Financial Accounting Standards Board (“FASB”), petitioner determined the replacement cost new, less physical depreciation, of all of the assets of The Turkey Store.

24. Petitioner contracted with Appraisal Alliance, Inc., to provide an opinion of the “fair market value in place” of the Barron Plant as of the date of The Turkey Store transaction. Appraisal Alliance used the following definition of “fair market in place (in use)”:

The price estimated in terms of money which a property might bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all of the uses to which those assets are adapted and for which they are capable of being used. Market value assumes that assets are installed in place and ready for continued use. The willing buyer-willing seller concept assumes that neither party is under abnormal compulsion to act.

Appraisal Alliance then produced a replacement-cost appraisal of the Barron Plant improvements, less physical depreciation as of February 24, 2001.

25. The analysis in the replacement-cost appraisal (1) determined the cost to replace a facility as it was used on February 24, 2001, without restrictions imposed by the existing site, (2) did not include any deduction for economic obsolescence, and (3) accounted for functional obsolescence by not including superadequacies³ in the initial replacement-cost analysis.

26. The replacement-cost appraisal was not intended to determine the price the Barron Plant would bring on the open market as a whole, in piecemeal, or for an alternate use.

27. In a report dated December 14, 2001, Appraisal Alliance determined that the cost of replacing the Barron Plant buildings was \$16,215,000, less physical depreciation of \$6,485,000, netting a replacement cost of \$9,730,000. In the same report, Appraisal Alliance determined that the cost of replacing other land improvements⁴ was \$1,735,000, less physical depreciation of \$555,000, netting a replacement cost of \$1,180,000. Appraisal Alliance determined that the replacement cost of the building and improvements of the Barron Plant, less physical depreciation, was \$10,910,000 as of February 24, 2001.

³ Superadequacies are physical characteristics of a building that are overbuilt or enhanced more than is necessary for the current use. An example of a superadequacy would be a freezer that is now used for dry storage. Replacement cost analysis would account for such superadequacies by not including these characteristics in the first instance.

⁴ Land improvements include driveways and parking lots, fences, signs, flagpoles, light poles, certain outbuildings, etc.

28. The replacement-cost appraisal included an estimate of \$450,000 for the value of the land on which the Barron Plant is located. This estimate was based on conversations the appraiser had with people knowledgeable about the Barron area real estate market.

29. Petitioner also contracted for two additional appraisals of the Barron Plant. One was an appraisal for insurance purposes that evaluated the cost to replace the Barron Plant as of February 24, 2001, so that it could function in the same way without any deduction for depreciation.

30. The other appraisal was an appraisal for property tax purposes that evaluated the “fair market in exchange value” that relied primarily on sales of 12 comparable properties to determine the value of the Barron Plant.

Respondent’s Manufacturing Sales Data Base

31. Respondent maintains a data base of sales of manufacturing properties that come to the attention of respondent.

32. Sales are only placed in the data base once the State Board of Assessors is satisfied that the sale was an arm's-length transaction.

33. Determining the sales price of a piece of real property that is involved in a larger transaction is sometimes referred to as “allocation.”

34. When real property is part of a larger transaction, respondent will include that property in the data base only when respondent finds credible evidence to support an allocation of a sales price to the real property.

35. Respondent considers agreement by the seller and the buyer on the price to be attributed to the real property to be strong evidence allocating the sales price to that real property.

36. For each sale in respondent's data base, respondent prepares a Manufacturing Sales Data Sheet ("MSDS") that contains data and notes about the transaction.

Respondent's Opinion of Value

37. Respondent's opinion of value of the Beloit Plant is based on an appraisal dated November 15, 2002. Based on the comparison of the sales of three properties (including the Barron Plant), respondent concluded that the value of the Beloit Plant was \$8,386,000 as of January 1, 2001.

38. Respondent's appraisal was authored by two of its certified appraisers. In addition, the manager of respondent's western district property assessment office ("Western District Manager") provided information to the authors of the appraisal with respect to the Barron Plant.

Highest and Best Use

39. Respondent's appraisal employs the following definition of "highest and best use":

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the Highest

and Best Use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.⁵

40. Respondent's appraisal defines "financially feasible" as the "ability of a potential use to return a profit is examined with any unprofitable uses discounted from consideration."⁶

41. Respondent's appraisal concluded that the highest and best use of the Beloit Plant "is continued use as a food processing facility or, alternatively, as a distribution warehouse."⁷

42. At trial, one of the authors of respondent's appraisal conceded that the highest and best use of the Beloit Plant was continued use as a food processing facility.

Green Bay Warehouse

43. Comparable number 2 in respondent's appraisal is the February 19, 1999, sale of a warehouse in Green Bay (the "Green Bay Warehouse") via warranty deed for \$5,480,000.

44. The authors of respondent's appraisal did not conduct any examination of the feasibility of converting the Beloit Plant to a facility with the attributes of the Green Bay Warehouse.

45. In order to convert the Beloit Plant into a distribution warehouse that could be operated profitably, the following changes would have to be made:

⁵ Respondent's Appraisal at 9 (*citing* Appraisal Institute, THE DICTIONARY OF REAL ESTATE APPRAISAL (3d Ed. 1993) at 171).

⁶ *Id.* at 11.

⁷ *Id.* at 12.

- a. Up to 80 acres of additional trailer storage area would have to be purchased and developed;
- b. Up to 40 additional dock doors would have to be constructed;
- c. Sloped floors in the production areas would have to be leveled; and
- d. Walls in the production area would have to be removed.

46. In addition, the number of structural columns in the Beloit Plant would be an obstacle to profitable use as a distribution warehouse.

Jefferson Cold Storage Facility

47. Respondent's first comparable sale is the July 27, 1998, sale of a cold storage facility in Jefferson, Wisconsin, (the "Jefferson Cold Storage Facility") via warranty deed for \$8,360,000.

48. The transaction of which the sale of the Jefferson Cold Storage Facility was a part also included the sale of personal property (valued at \$1,985,000), goodwill (valued at \$1,000,000), supplies (valued at \$110,200), and construction-in-progress (valued at \$14,000.)

49. The Jefferson Cold Storage Facility included 9,400 square feet of cooler space, between 242,859 and 261,940 square feet of freezer space, 22,980 square feet of seafood processing space, and total improved space of 333,708 square feet.

50. The authors of respondent's appraisal did not conduct any examination of the feasibility of converting the Beloit Plant to a facility with the attributes of the Jefferson Cold Storage Facility and could not estimate the cost to do so.

51. Respondent made a 20 percent superior adjustment for quality of the Jefferson Cold Storage Facility. This adjustment included the additional freezer space in the Jefferson Cold Storage Facility.

52. In order to use a portion of a building for cooler or freezer space, the building must have certain physical characteristics above and beyond normal manufacturing construction standards.

53. Building requirements for cooler space include increased insulation on the walls and ceiling of each cooler room, modest alterations to the floor and sub-floor, and enhancements to the ceiling to support mechanical cooling equipment.

54. Building requirements for freezer space are considerably greater. Without such enhancements, maintaining a room with temperatures at or below freezing for any substantial length of time will cause condensation, ice build-up and moisture damage to the walls and ceiling, and will cause a cone of ice to form beneath the floor which will eventually result in the destruction of the floor due to heaving.

55. With respect to the floor, in order to convert ordinary production or storage space to freezer space, (1) the existing floor must be removed and excavated down three feet, (2) a concrete slab must be poured three feet below current grade, (3) tubing or ductwork, along with insulation, must then be installed above the slab to circulate to warm air or other medium to heat the area, (4) and then the floor must be replaced with a five-inch slab of concrete possibly topped with granite or other finish.

56. With respect to the ceiling, in order to convert ordinary production or storage space to freezer space, (1) about 16 inches of Styrofoam, vermiculite or other

similar material must be suspended from the ceiling and (2) fans must be installed to allow air movement to prevent frost from forming on the ceiling.

57. With respect to the walls, in order to convert ordinary production or storage space to freezer space, from six to eight inches of insulation must be added.

58. In general, the cost to construct freezer space is about \$100 per square foot.

59. To replicate a facility with the attributes of the Jefferson Cold Storage Facility, it would be less expensive to build the facility from the ground up than it would be to convert the Beloit Plant, not counting the cost to acquire the Beloit Plant.

60. Food processing plants are rarely, if ever, converted to distribution warehouse facilities because the cost of conversion would typically exceed the cost of building warehouse facilities from the ground up.

Barron Plant

61. Comparable number 3 in respondent's appraisal is the February 24, 2001, transaction by which petitioner acquired The Turkey Store, including the Barron Plant.

62. Neither of the authors of respondent's appraisal visited the Barron Plant in preparation for use of The Turkey Store transaction as a comparable in respondent's appraisal. The Western District Manager last visited the Barron Plant in 1999.

63. In late 2001 or early 2002, petitioner provided to the Western District Manager a copy of the fair-market-in-exchange appraisal of the Barron Plant that

employed the sales comparison approach to arrive at the market value of the Barron Plant.

64. Respondent filed its initial appraisal with the Commission in these proceedings⁸ (“Initial Appraisal”) on August 28, 2002, and it was authored by the same certified appraisers who authored respondent’s appraisal that was subsequently offered by respondent at trial.

65. Despite possessing the fair-market-in-exchange appraisal of the Barron Plant for several months prior to filing the Initial Appraisal, respondent did not include the Barron Plant as a comparable sale in the Initial Appraisal. The Initial Appraisal assigned a value of \$7,801,800 to the Beloit Plant.

66. Following a Pretrial Mediation Conference, the Commission issued a Scheduling Order Memorandum on September 27, 2002, that, among other things, ordered petitioner to produce for respondent a copy of its replacement-cost appraisal of the Barron Plant that was based on a value-in-use premise.

67. With the replacement-cost appraisal in hand, on November 18, 2002, respondent filed its revised appraisal of the Beloit Plant, which is respondent’s appraisal at issue here.

68. Respondent’s appraisal replaced one of the comparable sales from the Initial Appraisal and substituted The Turkey Store transaction with respect to the Barron Plant. Based on advice from the Western District Manager, the authors of respondent’s appraisal assumed a sales price for the Barron Plant of \$11,360,000, an

amount that equals the sum of the value of the buildings, improvements, and land from the replacement-cost appraisal of the Barron Plant.

69. Based solely on the substitution of The Turkey Store transaction, the authors of respondent's appraisal revised its valuation of the Beloit Plant to \$8,386,000.⁹

70. The authors of respondent's appraisal and the Western District Manager undertook no analysis or investigation of The Turkey Store transaction to determine the amount to allocate to the Barron Plant other than to rely upon the replacement-cost appraisal.

71. Neither the authors of respondent's appraisal nor the Western District Manager had any information reflecting an agreement between the parties to The Turkey Store transaction concerning the value they assigned to the Barron Plant, if any.

72. With respect to his advice to the authors of respondent's appraisal concerning the sales price of the Barron Plant, the Western District Manager provided no explanation for ignoring the fair-market-in-exchange appraisal that was provided by petitioner in late 2001 or early 2002.

73. The Western District Manager has been involved in allocating the sales price to real property that has been part of a larger transaction on more than 100

⁸ The Initial Appraisal is not the appraisal on which respondent based its opinion of value at trial.

⁹ Notwithstanding the increases in respondent's valuation of the Beloit Plant, respondent concedes that the Commission may not find a value in excess of the assessed value of \$7,341,900 for the two years at issue. See, *Prime Leather Finishes Co. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-235 at 15,002-03 (WTAC 1991), *aff'd* Wis. Tax Rptr. (CCH) ¶ 400-014 at 30,049 (Milw. Co. Cir. Ct. 1993).

occasions. The Turkey Store transaction is the first transaction that the Western District Manager relied upon an appraisal with a value-in-use premise of value.

74. In allocating the sales price to manufacturing property that is part of a larger transaction, respondent does not routinely use cost appraisals for determining the fair market value of properties in its data base.

Petitioner's Comparable Sales

75. Petitioner's appraisal contains 10 comparable sales:
- a. The August 1995 sale of a 126,350-square-foot food processing plant in Osceola, Iowa;
 - b. The March 1999 sale of a 106,600-square-foot frozen confectionary factory in Green Bay;
 - c. The April 1995 sale of a 206,793-square-foot vegetable processing facility in Ripon, Wisconsin;
 - d. The December 1995 sale of a 160,228-square-foot cheese processing facility in Green Bay;
 - e. The February 1996 sale of a 117,382-square-foot cheese processing facility in Beloit, Wisconsin;
 - f. The December 1997 sale of a 227,710-square-foot food processing facility in Bonduel, Wisconsin;
 - g. The July 1994 sale of a 116,000-square-foot pork processing facility in Sioux City, Iowa;
 - h. The December 2000 sale of a 335,503-square-foot food processing facility in New Hampton, Iowa;
 - i. The July 2000 sale of a 567,000-square-foot pork processing facility in Sherman, Texas; and
 - j. The May 2000 sale of a 363,028-square-foot food processing facility in Goodlettsville, Tennessee.

76. The December 1995 sale of a Green Bay cheese processing facility—petitioner’s comparable number 4—was included in respondent’s manufacturing sales data base.

77. Petitioner’s appraiser did not consider the value of refrigeration equipment in any of the comparable sales or in the Beloit Plant, in order to be consistent with the standard industry practice of not affording much value to such equipment.

Appraisal Principles & Market Practices

78. The sales comparison approach to valuation compares the sales of properties similar to the subject property in order to ascertain a value of the subject property.

79. Typically, the result of such an analysis generates a value in terms of an amount per square foot of improvements. In order to ascertain the value of the subject property, this amount per square foot is then multiplied by the size of the improvements of the subject property.

80. The sales comparison approach requires the appraiser to (1) select sales of properties that are similar to the subject property, (2) verify the terms of the sale and sale data, (3) and adjust the comparable property for date of sale and physical characteristics.

81. Generally speaking, the larger the building, the smaller the square-foot price that building will obtain on the market. This is caused by two factors. First, the

larger the building, the fewer the number of potential purchasers. Second, the larger the building, the greater the economy of scale in constructing the building.

82. Because building size is inversely related to square-foot price, when comparing the sales of properties, appraisers will often adjust the price of properties with significantly smaller-sized improvements downward to account for this relationship.

83. Respondent explains the concept of “substitution” in its PROPERTY ASSESSMENT MANUAL FOR WISCONSIN ASSESSORS (“ASSESSMENT MANUAL”):

Assuming that a property is replaceable, the market value is usually set by the cost of acquiring an equally desirable and valuable substitute property. The premise of the principle of substitution is that a prudent purchaser will pay no more for a property than the cost of building an equivalent structure, or purchasing an existing property with similar utility or income generating capacity. This principle is the basis for the cost, income, and sales comparison approaches to value

ASSESSMENT MANUAL, at 7-8 to 7-9.

84. It is not unusual for large food processing plants to remain on the market for a number of years before they are sold and for purchasers to make significant investments into the plants after purchase.

85. The Beloit Plant is a limited market property because it is a large food processing facility that has a limited number of potential buyers at any one time.

86. A purchaser interested in operating or owning a distribution warehouse would not consider the Beloit Plant as a candidate for a distribution warehouse.

87. Refrigeration machinery and equipment is often removed from food processing plants before they are sold because purchasers place little or no value on such machinery and equipment.

88. Purchasers of large food processing plants similar to the Beloit Plant are typically large national or multi-national firms, and, as such, the market for such plants does not respect state lines.

89. It would violate standard appraisal practice to limit comparable sales to certain geographical locations.

90. The Beloit Plant is a limited market property in that there are a limited number of transactions involving comparable properties.

Procedural Facts

91. Respondent valued the Beloit Plant (exclusive of land value) at \$7,341,900 as of January 1, 2001. On appeal, the State Board of Assessors, under the date of October 16, 2001, sustained the original valuation.

92. Petitioner filed a timely petition for review with the Commission objecting to the actions of the State Board of Assessors with respect to the January 1, 2001, assessment. This petition for review was assigned Docket No. 01-M-207.

93. Respondent valued the Beloit Plant at \$7,371,100 as of January 1, 2002. On appeal, the State Board of Assessors, under the date of August 20, 2002, sustained this valuation.

94. Petitioner filed a timely petition for review with the Commission objecting to the actions of the State Board of Assessors with respect to the January 1, 2002, assessment. This petition for review was assigned Docket No. 02-M-283.

95. The parties have stipulated that the value of the Beloit Plant as determined in these proceedings shall apply as of January 1, 2001, and January 1, 2002.

APPLICABLE LAW

Statutes

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.

70.995 State assessment of manufacturing property.

* * *

(13) In the sections of this chapter relating to assessment of property, when the property involved is a manufacturing property subject to assessment under this section, the terms "local assessor" or "assessor" shall be deemed to refer also to the department of revenue except as provided in sub. (10).

73.03 Powers and duties defined. It shall be the duty of the department of revenue, and it shall have power and authority:

* * *

(2a) To prepare, have published and distribute to each property tax assessor and to others who so request 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. The manual shall be amended by the department from time to time to reflect advances in the science of assessment, court decisions concerning assessment practices, costs, and statistical and other information considered valuable to local assessors by the department. . . .

* * *

CONCLUSIONS OF LAW

1. The presumption of correctness associated with respondent's assessment is not rebutted merely because respondent offered at trial an appraisal that sets a value for the Beloit Plant that is more than \$1 million in excess of the assessment.

2. Respondent's use of The Turkey Store transaction as a comparable sale in its appraisal is inappropriate because there is no evidence that either party to the transaction settled on a sale price, and there is no credible evidence supporting respondent's allocation of \$11,360,000 of the \$335,000,000 purchase price to the Barron Plant.

3. Respondent's use of the sales of the Jefferson Cold Storage Facility and the Green Bay Warehouse are inappropriate because respondent failed to conduct any examination of the cost to convert the Beloit Plant to use as a distribution warehouse.

4. Respondent's use of the sales of the Jefferson Cold Storage Facility and the Green Bay Warehouse are inappropriate because it would not be practical to purchase the Beloit Plant and convert it to a use as a distribution warehouse.

5. The presumption of correctness associated with respondent's assessment is rebutted, because it is supported by an appraisal based on three comparable sales, all of which are inappropriate.

6. Petitioner's opinion that the value of the Beloit Plant is \$15.00 per square foot is supported by the credible expert witness testimony and evidence offered at trial.

7. Based upon a value of \$15.00 per square foot, and the stipulations that the Beloit Plant is 334,000 square feet in size and the Beloit Plant Parcel is valued at \$553,700, the total value of the Beloit Plant as of January 1, 2001, and January 1, 2002, is \$5,015,300.

OPINION

Standard of Review

Ordinarily, an assessment of the State Board of Assessors would be presumed correct and the person assessed would bear the burden of demonstrating that assessment is incorrect. *Lindberg Div. of Sola Basic Industries, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-177 at 30,580 (WTAC 1995). In *Universal Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-316 (WTAC 1997), the Commission ruled that this presumption was rebutted when respondent offered an appraisal that was lower than the value asserted by the State Board of Assessors. We held that when respondent offered a certified appraisal value lower than the assessed value determined by the State Board of Assessors, this was a concession that the assessment is incorrect, and, therefore, the presumption of correctness is removed. *Id.* at 3. In such a case, the person assessed no

longer has the burden of proving that the assessment is incorrect, but still bears the burden of persuasion. *Id.*

In this case, the State Board of Assessors sustained the assessment of the Beloit Plant of \$7,341,900. In the appraisal respondent offered at trial, the value of the Beloit Plant was set at \$8,386,000. Petitioner argues that just as in *Universal Foods*, because respondent now offers a value that differs from the assessment determined by the State Board of Assessors, it has lost the presumption of correctness associated with that assessment. We disagree and rely upon our language in *Unviversal Foods*:

What, then, is the effect of [respondent's] entering into evidence before the Commission a certified appraisal value *lower* than its assessed value? It is clearly a concession by [respondent] that the value established by its own State Board of Assessors is incorrect. . . . [Emphasis in original; footnote omitted.]

Id. *Universal Foods* clearly dealt with the situation where respondent concedes that the assessment determined by the State Board of Assessors is too high. The fact that respondent can support a valuation in excess of that determined by the State Board of Assessors does not remove the presumption of correctness. We should note, however, that a significant disparity between the assessment and the value asserted by respondent at trial certainly raises the possibility that something is amiss. In this case, the difference between these two numbers is more than \$1,000,000 or 14.4 percent of the assessment. Such a substantial disparity raises questions about either the original assessment or the appraised value offered at trial.

Respondent's Opinion of Value

Respondent's opinion of value is based on a sales comparison approach that considered three comparable properties: the Jefferson Cold Storage Facility, the Fox Valley Warehouse, and the Barron Plant. Petitioner challenges the adequacy of each of these comparables.

Sale of the Barron Plant

It is undisputed that the transaction by which petitioner came to own the Barron Plant was not a "conveyance" as that term is used in section 77.21(1) of the Statutes and, therefore, did not trigger the reporting requirements or liability under the real estate transfer fee. Rather, the Barron Plant was but one asset owned by a corporation that was acquired by petitioner.

The fundamental problem with respondent's use of The Turkey Store transaction is that there is no credible evidence in the record to determine a sales price for the Barron Plant. In fact, there is no evidence that the parties to the transaction had actually agreed upon a sales price for the Barron Plant. It is not possible to consider an arm's-length sale of a property without credible evidence of the price that was paid for the property.

Very few sales of real property are entirely pure. Even with the simplest of conveyances, there may be items of personal property that are included in the sale. If the appraiser can reasonably and credibly segregate the price paid for the real property from other elements of the transaction, then it may be possible to determine a sales price that can be considered in comparing the comparable property with the subject property.

Sometimes transactions are more complex. For example, the conveyance of real estate may accompany the acquisition of a business and all of the tangible and intangible property that go with the business as a going concern. While it may be more difficult, one can imagine circumstances in which an appraiser could reasonably segregate the amount paid for the real property apart from the other elements of the transaction.¹⁰

One step further removed is the situation in which the transaction is not an asset transaction, but a stock acquisition. When an individual or entity acquires all of the stock of a corporation or ownership interest of another type of entity, it may be impossible to determine if the parties settled upon a price for an item of real property that is owned by the corporation or other entity that was acquired. One can imagine circumstances, however, where it might be possible for an appraiser to reasonably determine the price that was allocated to an item of real property owned by the entity that was acquired. Common sense would indicate that the greater the value of an item of real property in relation to the total acquisition cost of an entity, the more likely the parties allocated a purchase price to that item. If, for example, the value of a piece of real property represents 80 percent of the total amount paid for the ownership of an entity, an appraiser is more likely to be able to ascertain the sales price allocated to the real property, if any, than if the value of the real property represents 20 percent of the total amount paid.

¹⁰ The analysis in this and the next two paragraphs is made without reference to professional appraisal standards required by section 70.32(1) of the Statutes. Rather, the issue is proof and a fact-finder's ability to have confidence in an assessor's determination of the sales price in various scenarios.

In this case, respondent's assigned sales price of the Barron Plant, \$11,360,000, represents 3.4 percent of the amount petitioner paid for the stock of The Turkey Store and 2.4 percent of the total gross assets of The Turkey Store, based on petitioner's filings with the federal government. Since the Barron Plant represented such a small percentage of the transaction price and the gross value of the assets conveyed, not only does it make sense that the parties did not explicitly allocate a sales price, it seems highly unlikely that either party would give much consideration to a sales price for the Barron Plant. Under such facts, it would seem a very difficult task to determine the actual sales price associated with the Barron Plant.

In analyzing sales of comparable properties, the assessor may reject the allocation of the sales price to specific elements of the transaction if the assessor is able to show that the allocation of the parties was suspect and did not accurately reflect fair market value. *Dempze Cranberry Co., Inc. v. Board of Review of Village of Biron*, 143 Wis. 2d 879, 887-88 (Ct. App. 1988). In *Dempze*, the assessor employed a sophisticated analysis to show that the parties to a transaction allocated an inordinate portion of the sales price to exempt and personal property. *Id.* at 887. In this case, not only is there no allocation by

the parties to The Turkey Store transaction of the price to be assigned to the Barron Plant,¹¹ there was no analysis by respondent to determine the sales price for the Barron Plant and there is no credible evidence to support the allocation offered by respondent.¹²

Respondent's sole basis for allocating \$11,360,000 to the Barron Plant out of \$335,000,000 paid for the stock of The Turkey Store is a replacement-cost appraisal conducted for petitioner. Petitioner's purpose in obtaining the replacement-cost appraisal was to determine the replacement cost new of all of the assets owned by The Turkey Store at the time of acquisition, less physical depreciation, and was needed, at least in petitioner's opinion, to comply with FASB requirements.

The appraiser conducting the replacement-cost appraisal was not attempting to determine what price the Barron Plant would bring on the open market. In fact, the replacement-cost appraisal contains no comparison to sales of comparable properties. The replacement-cost appraisal determined the cost to replace the Barron

¹¹ We are concerned that in the absence of an allocation agreement by the parties to a transaction like the transaction here, a sale may not fall within the definition of "arm's-length sale" as that term is used in section 70.32(1) of the Statutes. The purpose for examining arm's-length sales is to ascertain how the market values comparable properties. If the parties to a sale have not agreed upon a sales price allocated to a piece of real property, how has the market informed the appraiser on the value of the real property? How is reliance on an appraisal contracted for by one party to a transaction after the date of the transaction any different from an appraisal conducted for the owner of real property for some other reason, e.g., an appraisal used to set the value to be incorporated into a buy-sell agreement? Should an appraiser be allowed to include as a comparable "sale" the value found in an appraisal attendant to the execution of a buy-sell agreement? It does not appear that there is a material difference from such an example and the appraisal relied upon by respondent. Because the Commission has excluded The Turkey Store transaction as a comparable sale on other grounds, we leave these issues for another day.

¹² We doubt it is possible to allocate the actual sales price of the Barron Plant in a manner that would satisfy even the relaxed evidentiary standards applicable to administrative agencies and be consistent with professional appraisal standards. However, we need not reach this issue because there is no credible evidence to support the allocation offered by respondent.

Plant as it was used on the date of The Turkey Store acquisition, without consideration of the restrictions imposed by the site of the Barron Plant and without any deduction for economic obsolescence. The value of the land on which the Barron Plant sits was not based on comparable sales but, rather, informal conversations with people in the area. For these reasons alone, the replacement-cost appraisal is insufficient to determine how much of the \$335,000,000 stock price to allocate to the Barron Plant.

The Western District Manager who supplied information about the Barron Plant to the authors of respondent's appraisal said that he had never used a value-in-use appraisal to determine the sales price of real property that was involved in a larger transaction. The Western District Manager inexplicably refused to consider another appraisal of the Barron Plant—an appraisal using a premise of fair-market-value-in-exchange and employing the sales comparison method of valuation—that set a lower value for the Barron Plant. Moreover, respondent does not ordinarily use replacement-cost appraisals for determining the fair market value of properties in its data base. These facts lead us to believe that respondent tried to take advantage of petitioner's attempt to comply with accounting standards to use an appraisal that would never be acceptable in practice before the Commission if the Barron Plant were at issue.

Petitioner also argues that the replacement-cost appraisal should not be used because it was a value-in-use appraisal. Respondent counters that with a statement from the ASSESSMENT MANUAL which provides that "if the current use is the highest and

best use of the property, the use value will equal market value.”¹³ In the absence of a recent sale, the ASSESSMENT MANUAL maxim might have merit.¹⁴ However, respondent treats The Turkey Store transaction as a recent sale of the Barron Plant, and the law is clear, “intrinsic value may have been greater, but it is the sale value which controls assessments.” *State ex rel. Evansville Merc. Assn. v. Evansville*, 1 Wis. 2d 40, 45 (1957). In a case routinely cited by respondent in its appraisals, the Supreme Court explained:

The statutory rule of assessment of real estate is restricted to its sale value in the open market and is not concerned with its intrinsic value if the intrinsic value differs either more or less from the sale value.

State ex rel. Markarian v. City of Cudahy, 45 Wis. 2d 683, 686 (1970), citing *State ex rel. Northwestern Mut. Life Ins. Co. v. Weiher*, 177 Wis. 445, 448 (1922). As we conclude above, there is evidence of a sales price for the Barron Plant. If respondent wants to treat The Turkey Store transaction as a recent sale of the Barron Plant, it must have evidence of the sales price and may not rely on a value-in-use appraisal.

For these many reasons, we cannot consider The Turkey Store transaction as a comparable sale.

Sales of the Jefferson Cold Storage Facility and Green Bay Warehouse

The two other comparable sales offered by respondent involve warehouses.

Respondent’s appraisal concluded that the highest and best use of the Beloit Plant is

¹³ ASSESSMENT MANUAL, at 7-4.

¹⁴ While the ASSESSMENT MANUAL is authoritative (Wis. Stat. § 70.32(1)), there are limits to its authority. The ASSESSMENT MANUAL must “conform to, rather than establish, Wisconsin law.” *Doneff v. Review Board of Two Rivers*, 184 Wis. 2d 203, 217 (1994). The mandate in section 73.03(2a) requires the ASSESSMENT MANUAL to reflect, among other things, court decisions. *Id.*

“continued use as a food processing facility or, alternatively, as a distribution warehouse.”

Recall respondent’s definition of “highest and best use”:

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the Highest and Best Use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

See, Finding 39, *supra*. Therefore, in order to consider a use as a highest and best use, the appraiser must determine, among other things, that the use is financially feasible. Respondent defines financially feasible as the “ability of a potential use to return a profit is examined with any unprofitable uses discounted from consideration.”

Based on respondent’s conclusion that the highest and best use of the Beloit Plant includes use as a distribution warehouse, respondent included two warehouse facilities—the Jefferson Cold Storage Facility¹⁵ and the Green Bay Warehouse (“Warehouse Comparables”)—as comparable sales. Respondent’s appraisal contains no examination as to whether the Beloit Plant could be operated profitably as a distribution warehouse, and the authors of respondent’s appraisal conducted no such examination. The sole reason given for considering a distribution warehouse as an alternate use for the Beloit Plant was that it happened to have a fair amount of warehouse space. No consideration was given to (1) the cost to level floors that are currently sloped toward floor drains, (2) the cost to remove numerous concrete and steel walls in the food

¹⁵ While it is true that less than 7 percent of the floor space of the Jefferson Cold Storage Facility is used for seafood processing, this amount pales in comparison to the area dedicated to freezer

processing area, (3) the cost to add dock doors and staging necessary to profitably use a 334,000- square-foot warehouse, (4) the cost and feasibility of adding parking lot area to accommodate the additional truck and trailer parking necessary to support a 334,000- square-foot warehouse, and (5) the problems posed by the existence of a number of structural columns in the Beloit Plant. With respect to the Jefferson Cold Storage Facility—a facility that has at least 24 times as much freezer storage space as the Beloit Plant—no consideration was given to the significant costs necessary to replicate that much freezer storage space, other than a 20 percent adjustment for quality on respondent’s comparable sales grid.¹⁶ Ironically, one of the authors of respondent’s appraisal conceded on cross-examination that the current use of the Beloit Plant as a food processing plant is the highest and best use of the Beloit Plant, and that he would not anticipate it would be converted to a facility like the Jefferson Cold Storage Facility. Transcript III at 98-99.

Respondent’s failure to undertake an examination to determine whether the Beloit Plant could be operated profitably as a distribution warehouse, by itself, is sufficient to exclude consideration of the Warehouse Comparables.

Moreover, the uncontradicted testimony at trial is that the cost to convert the Beloit Plant to a distribution warehouse with the attributes of the Jefferson Cold

storage. At best, food processing is a minor, ancillary use included in the Jefferson Cold Storage Facility.

¹⁶ This adjustment for quality by respondent amounted to \$4.81 per square foot. The credible testimony at trial showed that the cost to convert the Beloit Plant to a warehouse like the Jefferson Cold Storage Facility would be approximately \$100 per square feet for freezer and refrigeration facets alone.

Storage Facility would be so great that the resulting distribution warehouse could not operate profitably. In fact, it would be cheaper to replicate the Jefferson Cold Storage Facility from scratch than to convert the Beloit Plant to a similar use, even if one does not count the cost to acquire the Beloit Plant. Aside from the issue of freezer space, the uncontradicted testimony at trial is that to operate the Beloit Plant as a profitable distribution warehouse, one would need 80 acres of truck parking. The entire Beloit Parcel is only 27 acres.

We conclude, therefore, that it would not be financially feasible to convert the Beloit Plant to a use similar to that of either of the Warehouse Comparables, and that distribution warehouse use is not a highest and best use of the Beloit Plant.

Petitioner also objects to inclusion of the Warehouse Comparables due to the circumstances of their sale.¹⁷ Since we have excluded the Warehouse Comparables on other grounds, we will not consider these arguments.

Because we have rejected all three comparable sales included in respondent's appraisal, we will not consider respondent's appraisal or its opinion of value. For this reason, the presumption that respondent's assessment is correct is rebutted.

Petitioner's Opinion of Value

¹⁷ Petitioner argues the transaction involving the Jefferson Cold Storage Facility should be excluded because it was the sale of a going concern and respondent did not adequately substantiate the allocation of the sales price to the Jefferson Cold Storage Facility. Petitioner argues that the sale of the Green Bay Warehouse should be excluded because it was subject to a lease at the time of sale.

Petitioner offered an appraisal that contained ten comparable sales. Respondent objects to each. We will confine our analysis of petitioner's appraisal to four of the five comparable sales involving Wisconsin properties and a comparable sale from Texas.

Green Bay Frozen Confectionary Factory

Petitioner's comparable number 2 is the March 1999 sale of a Green Bay confectionary factory. None of respondent's expert witnesses testified about this comparable sale. However, respondent's counsel opines about the alleged inadequacies of petitioner's appraisal with respect to this comparable by referring to its MSDS in respondent's brief. Respondent argues that the Green Bay confectionary factory has layout problems, has an inferior clear ceiling height, poor general condition, and an older effective age. Respondent claims that petitioner's appraiser's 20 percent inferior adjustment is insufficient to account for these changes. Respondent also apparently argues that petitioner's appraiser's 10 percent superior adjustment for its smaller size is inadequate. However, respondent's failure to offer expert testimony to support these claims and to explain why they make comparable number 2 inappropriate prevent the Commission from concluding that petitioner's appraiser erred.

Respondent also argues that petitioner did not account for the fact that refrigeration equipment was removed from the factory prior to sale. Not only did respondent's expert not explain why this is inappropriate, it appears to the Commission that petitioner's appraiser was being entirely consistent. Petitioner's appraiser did not consider the refrigeration equipment in the Beloit Plant to be part of the real property to account specifically for the common practice in the industry of removing refrigeration equipment prior to sale.

Finally, respondent concludes that this was a discounted sale because the MSDS describes its use prior to sale as "COLD & MISC STORAGE" and its post-sale

intended use as “WAREHOUSE.” Not only do we have no expert witness informing the Commission why we should draw this conclusion, there is no foundation in the record to determine how these descriptions in the MSDS are used and what they mean.

For these reasons, we cannot accept any of respondent’s challenges to petitioner’s appraiser’s inclusion of the Green Bay confectionary factory as a comparable.

Ripon Vegetable Processing Facility

Petitioner’s comparable number 3 is the April 1995 sale of a vegetable processing facility in Ripon. Respondent’s expert testified about the age of the sale, but did not testify that petitioner’s appraiser’s time adjustment inadequately accounts for the date of sale or how it was inadequate. Respondent’s expert also testified that the plant processed vegetables, not meat,¹⁸ and had an inferior quality and layout. Yet, respondent’s expert did not testify that the 25 percent cumulative inferior adjustment accounting for these conditions was inadequate or how it was inadequate.

Respondent’s expert also testified that there was no refrigeration equipment at the Ripon vegetable facility. Again, he did not explain how this fact made this plant an inappropriate comparable and did not dispute that the elimination of refrigeration equipment from petitioner’s appraiser’s analysis controlled for this fact.

¹⁸ The Commission must point out that respondent appears to be highly inconsistent, perhaps to the point of being disingenuous, with respect to this criticism of comparable number 3. Respondent’s expert complained that the Ripon plant processed vegetables “which is a completely different process than meat canning or meat processing that’s done in” the Beloit Plant. Transcript III at 25. Respondent’s expert seems to have a problem with comparing the Beloit Plant to a different type of food processing plant, yet had no trouble comparing the Beloit Plant to the Green Bay Warehouse that had nothing to do with food processing. This claim alone damaged the credibility of respondent’s expert.

Respondent's expert testified that the plant had been vacant for six months prior to purchase and that the purchaser invested more than \$5.5 million in improvements to the plant. Of course, it is possible that some of the post-acquisition costs reflect the quality of the plant, and petitioner's appraiser accounted for the inferior quality of the Ripon vegetable plant. Nevertheless, respondent's expert provides no opinion as to whether the pre-sale vacancy or the post-sale improvements are out of the ordinary. In fact, it is not uncommon for food processing plants to be vacant for a period of time prior to sale and for the new purchaser to make a significant investment into the plant after purchase.

Finally, respondent in its brief opines that comparable number 3 must be a discounted sale. While this may be an opinion the Commission might accept from respondent's expert if supported, we cannot accept it from respondent's counsel.

Respondent has offered no credible evidence or argument to question the inclusion of comparable sale number 3 in petitioner's appraisal.

Green Bay Cheese Processing Facility

Petitioner's comparable sale number 4 is the December 1995 sale of a Green Bay cheese processing facility. Much of the same that was true of respondent's analysis of comparable number 3 is true of comparable number 4. Respondent's expert testified about the age of the sale, but does not explain how or why the time adjustment used by petitioner's appraiser is inadequate. Respondent's expert also testified about quality, age, layout, and clear ceiling height of the Green Bay cheese processing facility, but did not explain how or why petitioner's appraiser's 40 percent inferior adjustment does not

adequately account for these problems. Respondent's expert also testified that all of the cooling equipment had been paid for by the purchaser, who had been a tenant, but did not explain how or why the assumed exclusion of refrigeration equipment by petitioner's appraiser accounts for this.

Respondent's expert had two additional complaints about the use of the Green Bay cheese processing facility as a comparable. First, he testified that there's a McDonald's restaurant in front of the Green Bay cheese processing plant, and, therefore, "it's in a commercial area, not a very good location for this property." Transcript III at 27. Nowhere, however, does respondent's expert testify as to how or why this compares with the Beloit Plant (which, incidentally, is in a neighborhood with at least three restaurants, a bank, two shopping centers, and a Wal-Mart Supercenter) and whether, after weighing all of the factors that go into the location factor, petitioner's appraiser adequately accounted for this factor.

Respondent's expert also testified that the fact that the Green Bay cheese plant was purchased by a tenant indicates that the price paid was "probably" not a reliable market price. He went on to testify, "I think maybe that the tenant had been compelled to purchase this since they were already in there and operating it." Transcript III, at 28. It is hard to accept such an equivocal statement as reliable evidence. This "probable" conclusion is impeached by the fact that the sale of the Green Bay cheese processing plant had been accepted into respondent's manufacturing sales data base. Sales are included in the sales data base only after respondent's assessing staff determine

that the sales are reliable. If the sales price was not reliable, it should not have been in the data base in the first place.¹⁹

Respondent's counsel entered the fray and added two additional reasons why the Commission should not consider comparable number 4. First, respondent argues that petitioner's appraiser erred in giving a 15 percent superior adjustment to the Green Bay cheese plant for size considering the inferior quality of the plant's layout. The problem with respondent's analysis is that the size adjustment does not apply to building layout or condition. Petitioner's appraisal, as with most other appraisals filed with the Commission, refers to the relative size of the improvements being sold. The size adjustment accounts for the fact that for very large properties, the value per square foot is less than comparable properties of a smaller size. Petitioner's appraiser gave the Green Bay cheese plant a 15 percent superior adjustment because it is roughly half of the size of the Beloit plant: 332,159 square feet to 160,228 square feet. Respondent's appraisal makes a similar 10 percent superior adjustment when comparing the Green Bay Warehouse to the Beloit Plant because the Green Bay Warehouse is 104,000 square feet smaller than the Beloit Plant.

Finally, respondent's counsel argues that comparable number 4 should not be included because the sales price included in petitioner's appraisal "failed to reflect any adjustment" for 10,623 square feet of buildings that had been constructed by and owned by the tenant/purchaser. However, respondent's own MSDS states clearly that, while the

¹⁹ Comparable number 4 was subsequently removed from the data base because of the age of the sale, but it is not clear if it was in the data base at the time of the assessments at issue here.

site includes 10,623 square foot of buildings that were already owned by the purchaser, these buildings “ARE NOT INCLUDED IN THE TOTAL SQUARE FOOTAGE OF 160,228.”²⁰ Since 160,228 square feet is the size of the improvements petitioner’s appraisal considers subject to the sale, and since the total sales price of \$1.4 million is the same in both petitioner’s appraisal and respondent’s MSDS, respondent’s argument holds no water.

Respondent has offered no credible evidence or argument to question the inclusion of comparable sale number 4 in petitioner’s appraisal.

Bonduel Food Processing Facility

Petitioner’s comparable sale number 6 is the December 1997 sale of a Bonduel food processing facility. Respondent’s expert repeats his assertion that vegetable processing is dissimilar to meat processing. As we concluded with respect to comparable number 3, an appraiser who was willing to accept a distribution warehouse as a substituted use for a large food processing plant can hardly be credible when claiming vegetable processing is not a substituted use. *See, supra* note 18.

Respondent’s appraiser also questioned the condition and quality of the construction of the Bonduel food processing facility.²¹ However, respondent’s expert failed to testify that the combined 25 percent inferior adjustment for quality of construction/design, age, and condition employed by petitioner’s appraiser did not adequately account for these differences.

²⁰ Exhibit 12 at 2 (emphasis in original).

Respondent's expert also testified that at some unspecified period after the sale,²² the seller filed for Chapter 11 bankruptcy protection. Respondent's expert also testified that the parcel had to be subdivided before it could be sold. He concluded, "there's some indication that the seller was someone under some duress to sell this property." Transcript III at 31. That's not a conclusion one can take to the bank. Without something more definitive, we cannot exclude comparable number 6 on such equivocal testimony.²³

For these reasons, we cannot exclude comparable sale number 6 from petitioner's appraisal.

Sherman, Texas, Pork Processing Facility

Petitioner's comparable sale number 9 is the July 2000 purchase of a pork processing facility in Sherman, Texas. Respondent's expert testified that the Sherman, Texas, facility is 567,000 square feet or 70 percent larger than the Beloit Plant, but failed to testify that petitioner's appraiser inadequately accounted for this difference when he gave the Sherman, Texas, facility a 10 percent inferior adjustment for size.

Respondent's expert testified that the Sherman, Texas, property was located 60 miles north of Dallas, Texas, but did not testify that petitioner's appraiser's 15 percent superior adjustment for location was inadequate. Respondent's expert also testified that

²¹ Respondent's appraiser testified, "I don't think it would have been a USDA certified plant." Transcript III at 31. We cannot accept such equivocal testimony.

²² While the testimony is cryptic at best, it appears that the seller filed for Chapter 11 bankruptcy protection at least one year after the sale was completed.

the facility was not entirely used by the prior owner, that it was vacant for 12 months prior to sale, and that, as of the date of trial, the purchaser had not brought the facility online, although it had done some demolition work on the plant. Again, however, respondent's expert did not testify that these periods where the facility was idle or operating at less than 100 percent are out of the ordinary or how they would affect the sales price. Similarly, respondent's expert testified that the purchaser planned to invest \$40 million to \$60 million to renovate the plant, but did not testify how much of this is alterations to the real property as opposed to equipment, that this amount is out of the ordinary, or how this would impact the purchase price. Respondent's expert testified that the Sherman, Texas, facility was going to be reconfigured for its new owner, but did not testify that this was out of the ordinary and did not compare the quality of the facility to the Beloit Plant.²⁴

Respondent argues that petitioner's appraiser incorrectly indicated that 32% of the Sherman, Texas, facility was refrigerated when, according to respondent, there was no refrigerated *space* on the date of sale. The record does not support this allegation. It is true that the parties to the transaction placed no value on the refrigeration *equipment* that had not been removed. This does not mean that there was no space in the Sherman, Texas, facility with sufficiently reinforced and insulated walls, ceilings, and floors to support refrigerated uses in 32 percent of the plant.

²³ The record does not indicate whether comparable sale number 6 was accepted in respondent's sales data base. However, if it was, this would be further evidence impeaching respondent's conclusion that comparable sale number 6 was a sale under duress.

For these reasons, we cannot exclude comparable number 9 from petitioner's appraisal.

Petitioner's Remaining Comparables

Respondent has registered objections to the five remaining comparable sales used by petitioner's appraiser. These include three food-processing facilities in Iowa, one in Tennessee, and one in Beloit, Wisconsin. Respondent's concerns with respect to the three Iowa facilities include, among others, allegations that differences in the way Iowa accounts for personal property and fixtures affect their viability as comparable sales. Respondent's objections to the Tennessee comparable include allegations that the seller rejected significantly larger offers from its competitors. Respondent's objections to the Beloit facility include, ironically, that the purchaser was planning to use the facility as a warehouse.

For purposes of this Decision and Order, we take no position on these or any other of respondent's objections to the five remaining comparables. However, even if we found for respondent with respect to all five comparables and excluded them from petitioner's appraisal, it would not materially change petitioner's opinion of value. Petitioner's appraisal concluded that the square foot value of the Beloit Plant was \$15.00. This was based on an average sales price of \$14.58 per square foot and a median sales price of \$14.85 per square foot of the 10 adjusted comparables.

²⁴ Respondent concludes that the Sherman, Texas, property was "not of similar desirability or utility." Respondent's Brief at 36. There is no evidence in the record to support this assertion.

If respondent were to get its wish and the Commission were to find that the comparables associated with the three Iowa facilities, the Tennessee facility, and the Beloit facility were all invalid, the five comparables explicitly sustained above would yield an average sales price of \$14.77 per square foot and a median sales price of \$14.71 per square foot. We find that the five comparables explicitly sustained by the Commission sufficiently support petitioner's opinion of value of \$15.00 per square foot.

Adjustments for Stipulations

Subsequent to the preparation of petitioner's appraisal, the parties stipulated that the Beloit Plant was 334,000 square feet in size. Petitioner's appraiser used a size of 332,159 square feet, which, when multiplied by \$15.00 per square feet, generates a value of \$4,982,385. Petitioner's appraiser then rounded the value to \$5,000,000.

Multiplying \$15.00 per square foot by 334,000 square feet generates a value of \$5,010,000. Therefore, the Commission will add \$10,000 to the value determined by petitioner's appraiser to account for the stipulated size of the Beloit Plant.

The parties also stipulated that the value of the Beloit Plant Parcel is \$553,700. Petitioner's appraisal allocates \$550,000 of the \$5,000,000 value of the Beloit Plant to land and the remaining \$4,450,000 to improvements. The Commission will add \$3,700 to petitioner's opinion of value to account for the stipulated value of the Beloit Plant Parcel.

ORDER

The actions of the State Board of Assessors with respect to the value of the Beloit Plant on January 1, 2001, and January 1, 2002, are modified to establish a land value

of \$553,700, an improvements value of \$4,460,000, and a total value of \$5,013,700, and as modified, are affirmed.

Dated at Madison, Wisconsin, this 29th day of March, 2004.

WISCONSIN TAX APPEALS COMMISSION

Don M. Millis, Commission Chairperson

Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"