STATE OF WISCONSIN

TAX APPEALS COMMISSION

J. L. FRENCH, LLC.,

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DOCKET NOS. 10-M-105, 11-M-063, AND 11-M-319

DECISION AND ORDER

LORNA HEMP BOLL, CHAIR:

These cases come before the Commission for decision after the parties tried the cases in Madison, Wisconsin, on April 17-April 18, 2013. Petitioner, J. L. French, Inc., is represented by Attorneys Margaret M. Derus and Amy L. Barnes of Reinhart Boerner Van Deuren s.c.. The Department of Revenue ("the Department") is represented by Attorney John R. Evans. The issue in these cases involves the assessments of Petitioner's real property for the tax years 2009, 2010, and 2011. Both parties have filed post-trial briefs. We now uphold the Assessments as modified.

FINDINGS OF FACT

A. Jurisdictional Facts

1. Petitioner, J. L. French, is the owner of real property located at 4243 Gateway Drive, City of Sheboygan, Wisconsin, State Identification Number

81-59-281-R000001365, Local Parcel Number 59281479013, which is the subject of the above-referenced docketed cases. (Stipulation ("Stip."), ¶ 1.)

2. At issue in this case are the valuations of the subject property as of January 1, 2009, January 1, 2010 and January 1, 2011. (Stip., ¶ 2.)

3. On June 1, 2009, the Department issued a 2009 Notice of Real Property Assessment for the subject property to the Petitioner. (Stip., ¶ 5.)

4. On July 30, 2009, Petitioner filed a timely Objection to 2009 Real Estate Assessment with the Wisconsin State Board of Assessors ("Board of Assessors"). (Stip., ¶ 6.)

5. On March 5, 2010, the Board of Assessors issued to the Petitioner a Notice of Determination of 2009 Assessment. (Stip., ¶ 7.)

6. On May 4, 2010, Petitioner filed a timely Petition for Review of the Determination by State Board of Assessors for 2009 with the Commission. (Stip., ¶ 8.)

7. On June 21, 2010, the Department issued a 2010 Notice of Real Property Assessment for the subject property to the Petitioner. (Stip. ¶ 9.)

8. On August 10, 2010, Petitioner filed a timely Objection to 2010 Real Estate Assessment with the Board of Assessors. (Stip., ¶ 10.)

9. On January 14, 2011, the Board of Assessors issued to the Petitioner a Notice of Determination of 2010 Assessment. (Stip., ¶ 11.)

10. On February 7, 2011, Petitioner filed a timely Petition for Review of Determination by State Board of Assessors for 2010 with the Commission. (Stip., ¶ 12.)

11. On July 5, 2011, the Department issued a 2011 Notice of Real Property Assessment for the subject property to the Petitioner. (Stip., ¶ 13.)

12. On August 10, 2011, Petitioner filed a timely Objection to 2011 Real Estate Assessment with the Board of Assessors. (Stip., ¶ 14.)

13. On November 2, 2011, the Board of Assessors issued to the Petitioner a Notice of Determination of 2011 Assessment. (Stip., ¶ 15.)

14. On November 23, 2011, Petitioner filed a timely Petition for Review of Determination by State Board of Assessors for 2011 with the Commission. (Stip., ¶ 16.)

15. Trial in this matter was heard by Commissioner Thomas J. McAdams, presiding, with Commissioner Lorna Hemp Boll in attendance, on April 17-18, 2013, at the Tax Appeals Commission in Madison, Wisconsin.

B. Material Facts

16. The above-captioned matters involve assessments against J. L. French's manufacturing facility at 4243 Gateway Drive in the City of Sheboygan as of January 1, 2009, January 1, 2010, and January 1, 2011.

17. The Gateway Plant is a large industrial facility used by J.L. French to manufacture aluminum die castings such as engine blocks and parts of engine assemblies for the automotive industry. (TR10; Ex. M at 2; Ex. N at 2; Ex. W at 12.)

18. The plant is located on approximately 25 acres of land in the Sheboygan Business Center, an industrial park on the southern edge of City of Sheboygan with convenient highway access. (TR21; TR54.)

19. Both parties presented credible evidence that the highest and best use of the property is its current use as industrial/manufacturing (TR29, TR144, TR176, TR272.)

20. The Department determined a full value assessment for land and improvements for the Gateway Plant in the total amount of $12,101,400 for each of the Valuation Dates. (Exs. A, E, I.)

21. At trial, the Department's assessor presented an appraisal report asserting a value of the Gateway Plant of $12,386,900 as of January 1, 2009, $12,041,400 as of January 1, 2010, and $12,009,200 as of January 1, 2011. (TR206, 209; Ex. W at 8-9, 30.) The evidence offered by the Department supported a value greater than the assessment for 2009 and values lower than the assessments for 2010 and 2011.

22. The Department's assessor's report states that is a "self-contained summary report;" the same paragraph further states that supporting information is retained in the assessor's office. The Department's label was a misstatement; the report is a summary report as is indicated by its title. (Ex. W at 1 and 5; TR202.)

23. The Petitioner's appraiser claimed to use square footage measurements and calculations accurate to the 1/100 of a square foot. The Department used measurements accurate to the full square foot. (TR211.)

24. Using both cost and sales approach, J.L. French asserted and presented appraisal reports at trial showing that the market value of the Gateway Plant was $7,330,000 as of January 1, 2009, $7,000,000 as of January 1, 2010, and $7,000,000 as of January 1, 2011. (TR13, 93, 103, 114; Ex. M at 40; Ex. N at 35.) Petitioner's values based

only on the sales approach were $7,310,000 for 2009, $6,820,000 for 2010, and $6,800,000 for 2011. (Ex. M at 36 and 38; Ex. N at 33.)

25. The Department calculated its total market value based upon a total square footage of 401,781. (Ex. W) The Petitioner's appraiser's calculations were based upon a total square footage of 394,256. (Exs. M, N.) The Department's figure adds in square footage for the upper level mezzanine office space and deducts for an outdoor canopy area. (T219, T122)

26. Both parties' experts presented and primarily relied on the sales approach to valuation of the subject property, pursuant to the *Markarian* hierarchy. (Exs. M, N, W.)

27. In its sales approach, Petitioner used the following comparable sales:

Location	Sq. Ft.	Sale Date
Neenah	370,856	8/2008
Port Washington	406,259	6/2008
Johnson Creek	175,512	8/2006
Greenville	200,572	9/2008
Beloit	450,000	12/2008

For audit year 2009, Petitioner did not include the Beloit property because the information was not yet available. For audit year 2010, Petitioner used all 5 comparable sales. For audit year 2011, Petitioner eliminated the Johnson Creek comparable sale because the appraiser felt it was too far removed as to time. (Exs. M, N; TR107.)

28. The Port Washington, Johnson Creek, and Beloit properties had been rejected for inclusion in the Department's database of qualified sales. (TR344, TR248-249.)

29. The Port Washington property was located in a neighborhood with significant residential traffic control and substantial traffic lights/roundabouts between it and the closest major highways; the property was "essentially vacant" at the time of sale. (TR159-160.)

30. The Johnson Creek sale was part of a multi-state multi-property sale; it was rejected by the Department because the value was an allocated value based upon book value and the property had never been actively marketed. (TR247; T350-351; Ex. M at 30.)

31. The Beloit sale was rejected by the Department because the property was in extremely poor condition, was in a severely depressed market, and needed roof repairs in excess the sale price. Estimated repairs were $3 million while the sale price was only $2.4 million. (TR247-248, T343-344.)

32. At least three of the properties chosen by Petitioner as comparable sales had sizable portions used for warehousing. (Neenah, warehousing, Ex. W at 62; Port Washington, used for storage, TR158; Greenville, warehousing, Ex. W at 73.)

33. For all three audit years, the Department's assessor used the following comparable sales:

Location	Sq. Ft.	Sale Date
Neenah	370,856	8/2008
Madison	346, 210	8/2006
Pleasant Prairie #1	239,221	7/2007
Pleasant Prairie #2	254,400	3/2006
Greenville	200,572	9/2008
Menomonee Falls	179,691	7/2006

(Ex. W.)

34. The Neenah and Greenville properties were the same properties used by Petitioner's appraiser. The Department's assessor had personally fielded the sale of the Neenah property. (Exs. M, N, W.)

35. From her personal observation, the Department's assessor determined that the Neenah property was in less good condition and had several stories inside with overall lower ceiling heights rather being open to greater heights as is the subject property. She made appropriate upward adjustments for condition and height (TR334, TR339, TR343.) Petitioner's appraiser only observed the exterior of the Neenah facility. (TR55.)

36. The Department's assessor had also personally observed the Greenville property inside and out, noting that the Greenville property was divided in half inside, a fact unobservable from the exterior. She made appropriate upward adjustments for layout and design of the Greenville property. (TR340.) Petitioner's appraiser only observed the exterior of the Greenville facility and believed it to be "wide open" inside. (TR164, TR77.)

37. Petitioner was critical of the Department's use of six comparable sales in its sales approach. The Wisconsin Property Assessment Manual states, "Appraisers usually select three to five reasonably comparable sales for their estimate." However, there was no evidence to say it was error to use 6 sales. The Department's assessor preferred to use more sales to create a "balance" of sales, both newer and older and

better and worse in condition with similar physical characteristics such as construction, size, and age. (TR304, TR333-334.)

38. Petitioner was critical of the Department's use of 3 sales from 2006 in its 2011 calculations of value. Petitioner's expert testified that sales within 3 years are desirable. He further testified that in some cases the search much be expanded to a larger time frame although, in his opinion, after five years those sales are "not all that relevant anymore." (TR178.) The Department's assessor testified that older sales can still be relevant. (TR279.)

39. The weightings assigned to the Department's various comparable sales were determined by a computer program which assigned more weight to the sales requiring the least adjustment. The mathematical system allows for overrides if the assessor believes it is necessary. (TR301.)

40. Petitioner was critical of the Department's use of warehouse structures used as comparables. Warehouses may be similar to manufacturing facilities in terms of physical structure, construction, and layout, although they may lack the heavy mechanicals of a manufacturing plant. The Department's assessor took the lack of heavier mechanicals into account with his adjustments. (TR271, TR274.)

41. Petitioner's appraiser used a mathematical formula for calculating height adjustments for which there was no evidence of industry acceptance. The appraiser testified that the formula was based on personal experience and "it seems to work out." (TR51-52.)

42. Petitioner's appraiser viewed the subject property's height as a negative or superadequacy and adjusted the comparable sales downward accordingly, but there was credible testimony heights in the industry were increasing and recent additions to the subject property itself showed that the manufacturing processes benefited from the higher ceilings. (TR68, TR146-147, Ex. W at 12.)

DECISION

A. Applicable Statutes

Wis. Stat. 70.32 Real Estate, how valued
(1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

Wis. Stat. 70.995 State assessment of manufacturing property.
70.995(7)(b) Each 5 years, or more frequently if the department of revenue's workload permits and if in the department's judgment it is desirable, the department of revenue shall complete a field investigation or on-site appraisal at full value under ss. 70.32(1) and 70.34 of all manufacturing property in this state.
. . .
70.995(12)(a) The department of revenue shall prescribe a standard manufacturing property report form that shall be submitted annually for each real estate parcel and each personal property account on or before March 1 by all

> manufacturers whose property is assessed under this section. The report form shall contain all information considered necessary by the department and shall include, without limitation, income and operating statements, fixed asset schedules and a report of new construction or demolition. . . .
>
> **Wis. Stat. 73.03 Powers and duties defined**
> It shall be the duty of the department of revenue, and it shall have power and authority:
> **73.03(2a)** To prepare and publish, in electronic form and on the Internet, assessment manuals. The manual shall discuss and illustrate accepted assessment methods, techniques and practices with a view to more nearly uniform and more consistent assessments of property at the local level.

B. Property Assessment Framework

The process of property assessment is laid out in detail by the Wisconsin Supreme Court in *Nestle USA, Inc., v. Dep't of Revenue*, 2011 WI 4, ¶ 401-403, 331 Wis. 2d 256, 795 N.W.2d 46. The law requires property taxes to be levied upon all real property in this state, except property that is exempt from taxation. Wis. Stats. §§ 70.01-70.02. The statutes mandate that real property be assessed "from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale." Wis. Stat. § 70.32.

The Wisconsin Statutes require the Department of Revenue to prepare and publish what is known as the *Wisconsin Property Assessment Manual*. Wis. Stat. § 73.03(2a). Its purpose is to illustrate the acceptable methods for property assessment in Wisconsin. The *Wisconsin Property Assessment Manual* and Wisconsin case law set forth a three-tiered methodology for assessing real property's full value at private sale:

> First Tier: Evidence of a recent arm's-length sale of the subject property is the best evidence of full value.
>
> Second Tier: If the subject property has not been recently sold, then an assessor must consider sales of reasonably comparable properties.
>
> Third Tier: Only in situations where there has been no arm's-length sale of the subject property and there are no reasonably comparable sales may an assessor use one of the third-tier assessment methods.

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

C. Presumption of Correctness and Burden of Proof

As a general matter, assessments made by the Department are presumed to be correct, and the burden is upon the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determinations. *Calaway v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-856 (WTAC 2005), citing *Puissant v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984). This has been the law in Wisconsin for over a century. *See State ex rel Miller v. Thompson*, 151 Wis. 184, (1912). If there is credible evidence that may support the 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). The presumption of correctness may be overcome only if the challenging party presents significant contrary evidence. *Nestle*, 2011 WI 4.

If the presumption of correctness is successfully rebutted, the Petitioner still carries the burden of persuasion. *Id.* The Petitioner must prove an alternative valuation supported by credible, direct, and unambiguous evidence. *Royal Terrace*

Partnership v. Dep't of Revenue, Wis. Tax Rptr. (CCH) ¶ 400-244 (WTAC 1996), aff'd in *City of Two Rivers v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-345 (Dane Co. Cir. Ct. 1997).

ANALYSIS

We will first analyze the presumption of correctness in light of the evidence proven at trial. Because the Petitioner has presented some small evidence of error, we will also evaluate the evidence to determine whether the Petitioner has met its burden of persuasion.

A. Presumption of Correctness

The Petitioner argues that the evidence has rebutted the presumption of correctness. The Department disagrees, arguing that Petitioner's appraisal is inferior to that of the Department. The Department's position misstates the burden. We do not compare Petitioner's appraisal with that of the Department unless and until we find Petitioner has shown error sufficient to overcome to presumption of correctness. However, this is not to say that the evidence used to show error cannot be contained in Petitioner's appraisal. We begin by evaluating whether Petitioner has met that burden by examining the Department's assessments and Petitioner's evidence offered to refute those assessments.

The assessments for each of the three years at issue in this case were based upon a property value of $12,101,400. The Department, through its assessor, introduced evidence at trial to show a value of $12,386,900 for 2009, $12,041,400 for 2010, and $12,009,200 for 2011.

It is not unusual for the Department to offer an appraisal reflecting a value higher than the assessments being appealed. *See, Seats, Inc., v. Dept. of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-762 (WTAC 2004), citing *Hormel Foods Corp. v Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-741 (WTAC 2004), aff'd, Case No. 04-CV-1278 (Dane Co. Cir. Ct. 2004). The evidence offered by the Department for 2009 exceeded the assessment only by a very small percentage. We do not find this discrepancy to be error.

The market value evidence offered by the Department for 2010 and 2011 was lower than the assessments for those years. The Commission looked at the presumption of correctness in light of an appraisal which was *lower* than the appealed assessments in *Universal Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-316 (WTAC 1997). In that case, the Commission found that the Department's testimony of a lower appraised value was a concession that the higher value on the assessment was incorrect. *Id.*

We decline to set a limit as to how much lower the trial evidence of value must be in comparison to the assessment in order to establish error under the reasoning of *Universal Foods*; however, we do not find these small differences sufficient to overcome the burden of correctness for the audit years 2010 and 2011. We do, however, uphold only so much of the assessment as was proven at trial.

Petitioner has called attention to several other potential points of error. For example, the Department's assessor entitled her report a "summary report" but then in the body of the report referred to it as a "self-contained report." It is obviously not a self-contained report, and we do not find that reference to be of consequence.

Similarly, there is a reference to the appraisal being a mass appraisal as opposed to an individual appraisal; the evidence indicated it was an individual appraisal and the stray reference was similarly of no consequence.

Petitioner further criticized the Department's assessor for a failure to calculate square footage to the hundredth of a foot. It is difficult to say that a 400,000 square foot building can be measured to the exact square foot; it is absurd to say that the measurements need to be exact to the nearest 1.44 square inch. Thus, we likewise do not find this criticism persuasive.

Finally, three of the comparable sales used by the Department took place in 2006, over 4 years before the final audit year. The Department's assessor conceded that ideally comparable sales should not be much more than 3 years before the audit date of the subject property. However, we do not disqualify these comparable sales out of hand. The Department's assessor explained she kept the older sales in the calculations so as to have balance. Her goal was to compare the subject property to a mix of properties, some better and some worse. For 2009, these sales were within 3 years; for 2010, these sales were less than 4 years as well. For 2011 only, these sales were more than 4 years. Although older than optimal, the time frame goes to weight, as do the other adjustments such as size, heights, and markets.

Similarly, Petitioner finds fault in the Department's use of six comparable sales. Petitioner misinterprets the language of WPAM ("Appraisers usually select three to five reasonably comparable sales for their estimate") to declare that the use of more

than five comparable sales is prohibited. The use of six comparable sales in the sales approach is not *per se* error.

One specific point is potentially more persuasive. Petitioner takes issue with the choice of three comparable sales which involve properties primarily used as warehouses. Petitioner argues that properties with different highest and best uses cannot be comparable, citing *Meridian Eau Claire, LLC, v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-841 (WTAC 2005). *Meridian* involved a high-tech manufacturing facility. The Department in that case used an office building as one of its three comparable sales, and the Department's own witness testified that the property was not comparable to the subject property. *Id.*

In contrast, in the case at hand, the physical descriptions of the warehouses and the subject property were not so different as to be *per se* incomparable. The Department's assessor made adjustments to the sale prices of the warehouses to account for those physical differences.

The waters are muddied by the citations to the *Hormel* case. *Hormel Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-741 (WTAC 2004). We note that *Hormel* involved a highest and best use of "continued use as a food processing facility or, alternatively, as a distribution warehouse." Thus, the experts needed to consider the cost to convert the subject property to a warehouse. Here, there is no suggestion that the subject property should be used as a warehouse. Petitioner finds fault with the failure to consider costs to convert the subject property, but that itself would be in error. It is the comparable sale which must be adjusted to the subject property, not the reverse.

Petitioner's position on this issue is further weakened by the fact that three of Petitioner's own comparable sales had significant percentages of their square footage dedicated to warehousing.

Petitioner also takes issue with the total square footage used by the Department's assessor. Petitioner used a total square footage of 394,256, while the Department worked with a figure of 401,781. This difference is not substantial, but it merits some discussion as to possible error. Petitioner's appraiser could not show the specific inclusion of the mezzanine in the calculations of the total but testified that it was his "understanding" that the figure he used included a second floor mezzanine. The Department's assessor believed the Petitioner's figure was essentially that of the footprint which failed to include the second floor so he added the square footage of the mezzanine. Petitioner's figure included the square footage of the outdoor canopy area which was neither completely enclosed nor heated. We find the Department's assessor correctly added the second level and correctly eliminated outdoor canopy area. In light of the assessor's credible testimony, we do not find sufficient contrary evidence of error with respect to the square footage used by the Department.[1]

In total, we do not find the errors asserted by the Petitioner to be overly significant and therefore we do not find error sufficient to overcome the presumption of correctness. That said, because there appear to be at least a few small errors, we will

[1] There was conflicting testimony as to whether mezzanine office space was added during 2010 (TR228, TR328) or perhaps in 2012 (TR37). We note that neither party's square footage estimates changed between 2009 and 2011. If this is error for one party, it is the same error for the other.

proceed with the exercise of evaluating whether Petitioner's trial proof met the lower standard of the burden of persuasion. We find that it did not.

B. Burden of Persuasion

At this point, our focus shifts to the Petitioner's proof through its appraisals and the testimony of the appraiser. To meet its burden of persuasion, Petitioner must show by a preponderance of the evidence that its proffered market values are more accurate than those presented by the Department.

Case law and the Wisconsin Property Assessment Manual dictate a tri-level hierarchy, commonly referred to as the "Markarian Hierarchy," established in *State ex rel. Markarian v. City of Cudahy*, 45 Wis. 2d 683 (1970), and outlined above. The record reflects that the first level (recent sale of the subject property itself) was not available. The pertinent proof, therefore, turns on the choices of recent reasonably comparable sales, the adjustments made to those sales in comparing them with the subject property, and the resulting calculations of value for of the J. L. French property.

Petitioner's Comparable Sales

In its sales approach, Petitioner's appraiser used four comparable sales for the audit year 2009 and adding a fifth for audit year 2010 to opine the market value of the property was $7,330,000 and $7,000,000 for those years respectively. For 2011, Petitioner's appraiser used the same sales as he used for 2010 but without the Johnson Creek property because he believed it was too far removed in time; for that year, Petitioner's opinion of market value was $6,800,000.

The Department agreed with the choice of two comparable sales, the Neenah and Greenville sales, although the Department's assessor adjusted them differently. We do not find the remaining three property sales to be persuasive for these reasons:

Port Washington: It was not exactly clear why, but the property had been rejected for inclusion in the Department's database. There was credible evidence that this property was virtually vacant at the time of the sale. In addition, the property was in a substantially different neighborhood without the immediate highway access enjoyed by the subject property. Petitioner's appraiser testified that he checked the Department's database regarding this property but didn't notice that it had been rejected as a valid sale.

Johnson Creek: This sale was part of a multi-state multi-property sale. The portion of the total sale allocated to the Johnson Creek sale was based upon book value and was not shown to be based upon the actual market value of the specific property in Johnson Creek. The Petitioner's own appraisal indicates that the property was not offered to the general public for sale, a requirement for an arms-length sale. The Department rejected the sale, so it was not included in the Department's database. We do not find this sale to be an appropriate comparable sale.

Beloit: The Beloit sale lacked validity based upon testimony of the anticipated cost of a much needed roof replacement. The estimated cost of repairs exceeded the sale price. Petitioner's appraiser did not seem to consider the poor

condition of the property and did not take the economic realities of the Beloit area into account. We do not find this sale to be an appropriate comparable sale.

Petitioner's appraiser based his opinion of market value using 4 comparable sales for 2009 and 2011 and 5 comparable sales for 2010. Three of the 5 properties used by the Petitioner were rejected from the Department's database and are questionable at best. Given the percentage weightings for these suspect comparable sales,[2] Petitioner's opinion of value of the subject property itself becomes suspect.

Petitioner's Size Adjustment Methodology

Petitioner's appraiser employed a mathematical formula to adjust for size, but there was no evidence of an industry basis for his methodology; in fact, the appraiser testified that the formula was based on personal experience and "it seems to work out." Further, the methodology appeared arbitrarily customized for this case and properties of the size of the subject property. Although he made calculations consistently across the various comparable sales, we do not see a credible basis for his methodology.

Other Factors

Both parties used two of the same comparable sales, Neenah and Greenville. The weightings the Department assigned to these comparable sales were calculated by the computer program which takes into account condition and the total gross adjustments, assigning more weight to those sales which require the least

[2] For 2009, the total weight given to the Port Washington and Johnson Creek sales was 35%. In 2010, the total weight given to the Port Washington, Johnson Creek, and Beloit sales was 40%. In 2011, the total weight given to the Port Washington and Beloit sales was 30%. (Exs. M and N.)

adjustments and are thus are deemed the most comparable. The weightings change from year to year as the subject property ages. The testimony was less clear as to the basis for the weightings and changes in weightings chosen by Petitioner's appraiser.

With respect to square footage, as noted above, we find the Department's square footage figure to be more accurate. The parties also disagreed on the role of ceiling heights in their adjustments. There was credible evidence that industrial facilities can and do employ ceiling heights in excess of the optimal height figure adopted by Petitioner's expert. Of particular interest was the fact in 2007 the Petitioner had added new production space with ceiling heights in excess of 40 feet, while arguing that only 28-32 foot ceilings were desirable.

Summary

The Petitioner bears the burden to show error in the assessments. Although there was some evidence of what might be perceived as error, it was not substantial and did not rise to the level of proof required to overcome the presumption of correctness. Even if we reach the simple burden of persuasion, the Petitioner must prove its evidence is more credible than that of the Department. The Petitioner has failed to meet that burden as well. The Department's assertions were grounded in more credible evidence.

CONCLUSIONS OF LAW

1. Petitioner has shown some contrary evidence, but the evidence was insufficient to rebut the presumption of correctness.

2. Even if the presumption were overcome, Petitioner has not met its burden of persuasion to refute the property assessments.

3. The Department produced evidence sufficient only to support modified assessments of $12,041,400 for 2010 and $12,009,200 for 2011.

ORDERS

Based upon the foregoing,

IT IS HEREBY ORDERED that the Department's assessments for 2010 and 2011 are modified to conform to the proof at trial at $12,041,400 for 2010 and $12,009,200 for 2011. The Department's assessments for 2009, 2010, and 2011 are otherwise upheld.

Dated at Madison, Wisconsin, this 21st day of May, 2014.

WISCONSIN TAX APPEALS COMMISSION

Lorna Hemp Boll, Chair

Roger W. LeGrand, Commissioner

David D. Wilmoth, Commissioner

ATTACHMENT: **NOTICE OF APPEAL INFORMATION**

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

NOTICE OF APPEAL INFORMATION

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

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

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

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

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

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

1. **The petition must be filed in the appropriate county circuit court and served upon the Tax Appeals Commission either in-person, by certified mail, or by courier, and served upon the other party (which usually is the Department of Revenue)** within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.

2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.

3. The 30-day period starts the day after personal service or the day we mail the decision.

4. **The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.**

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

This notice is part of the decision and incorporated therein.