STATE OF WISCONSIN

TAX APPEALS COMMISSION

STURM FOODS, INC.,	**DOCKET NOS. 12-M-129, 12-M-130, 12-M-131, 13-M-79, 13-M-80, 13-M-81, 14-M-118, 14-M-119 AND 14-M-120**
CITY OF MANAWA,	**DOCKET NOS. 12-M-148, 12-M-149, 12-M-150, 13-M-104, 13-M-105, 13-M-106, 14-M-143, 14-M-144 AND 14-M-145**

Petitioners,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION AND ORDER

LORNA HEMP BOLL, CHAIR:

The Commission conducted a trial in these cases in Madison, Wisconsin, on October 13-15, 2014, Chair Lorna Hemp Boll, presiding. The Petitioner was represented by Attorney Robert A. Hill, Robert Hill Law, Ltd., Maplewood, Minnesota. The City of Manawa was represented by Attorney Amie B. Trupke, Stafford Rosenbaum LLP, Madison, Wisconsin. The Respondent, the Wisconsin Department of Revenue ("the Department") was represented by Attorney John R. Evans at trial and is now

represented by Attorney Axel F. Candelaria.[1] All parties filed post-trial briefs. Based upon the proceedings at trial, the exhibits received at trial, and the entire record, the Commission upholds the assessments, findings, concluding, and ordering as follows:

FINDINGS OF FACT

A. Jurisdictional Facts

1. Petitioner owned manufacturing property in the City of Manawa, Wisconsin. The holdings consisted of three parcels, one located in the downtown area of Manawa ("Downtown Plant" or "Old Plant") and two in an industrial area more on the outskirts of town (collectively "New Plant" or "Industrial Drive Properties"). These cases involve Petitioner's objections to the Department's valuations of the properties as of January 1, 2011; January 1, 2012; and January 1, 2013.

2. The three parcels at issue in this case are the following:

Parcel	Docket No.	Parcel No.	Computer Assessment No.	Improved Square Footage (SF)[2]
Downtown Plant (Old)	12-M-129	000011877	81-68-251-R000011877	185,787
1310 Industrial Drive (New, south)	12-M-130	000011881	81-68-251-R000011881	283,900
1250 Industrial Drive (New, north)	12-M-131	000030639	81-68-251-R000030639	563,288

[1] After the trial, this case was reassigned to Attorney Axel F. Candelaria, who filed post-trial briefs on behalf of the Department.

[2] Petitioner's square footage measurements are somewhat less primarily because they include only ground floor measurements. The Department's initial square footages were 281,000 (New Plant South), 551,239 (New Plant North), and 179,396 (Old Plant); the property was remeasured by the Department in 2013 and found to be as listed.

3. Petitioner filed objections to the 2011 assessments on or about August 24, 2011. The Board of Assessors denied the objections in Notices dated May 23, 2012. Petitioner filed these appeals with the Commission on June 14, 2012.

4. Petitioner filed objections to the 2012 assessments on or about August 6, 2012. The Board of Assessors denied the objections in Notices dated March 14, 2013. Petitioner filed these appeals with the Commission on April 1, 2013.

5. Petitioner filed objections to the 2013 assessments on or about July 29, 2013. The Board of Assessors denied the objections in Notices dated March 18, 2014. Petitioner filed these appeals with the Commission on April 11, 2014.

6. The City filed its own timely petitions, one corresponding to each of the Petitioner's petitions, which it characterized as cross-appeals. In each of its filings, the City stated, "The City believes the assessment is correct and is filing this cross appeal to refute the property owner's objection."

B. Material Facts

The Sturm Properties

7. Petitioner's properties are located in Manawa, Wisconsin, a town of less than 1400 about 35 miles northwest of Appleton and the Fox River Valley area. The Manawa labor force is insufficient to support the Sturm Foods activities, so employees must be drawn from farther away. Manawa is not located near any major path of travel and is, therefore, far from an ideal location for a manufacturing or warehousing facility.

8. The properties at issue consist of two general locations, the "New Plant" which consisted of two parcels and the "Old Plant" which is located two miles

north in downtown Manawa. Neither location is convenient to a four-lane highway or interstate. Sturm Foods' product lines produce oatmeal, instant dehydrated milk, hot cocoa, dried soups, other dry mixes, and a liquid beverage enhancer called Mio sugar-free drinks; recently Sturm Foods has added lines to produce coffee K-cups and has plans to expand the coffee production.

9. The New Plant, located on Industrial Lane and Union Drive was originally built in 1992, with additions in subsequent years. It has modern 40-foot ceilings and was originally intended primarily for warehousing. Through the years, more space has been dedicated to manufacturing, utilizing two-level bays for gravity flow production. The New Plant was designed with food-production quality and contamination avoidance in mind.

10. The Old Plant, located on Bridge Street/Union Street/Center Street in downtown Manawa, was originally constructed in 1953, with numerous additions and renovations through 1993. The Plant is made up of five separate structures totaling approximately 185,000 SF. The Plant is older both in construction materials and in layout; it has no sprinkler system and its limited space and piece-meal construction make for inefficient product flow and congested processes. The Downtown Plant houses the main office and is used for production of dry powdered foods.

11. The parties agree that the highest and best use of both facilities is continued use warehousing/food-processing/light industrial facility.[3]

[3] The City has indicated that it agrees with this highest and best use; however, some of its proof indicates otherwise as will be addressed below.

Comparable Sales

The trial testimony included detailed presentation and questioning regarding the various sales each party chose to analyze as comparable to the Sturm Foods properties. The following paragraphs incorporate the details we found most persuasive regarding the various comparable sales offered by the parties.

Petitioner's Comparable Sales for the New Plant

12. Petitioner's first comparable sale (Comp 1): Lake Mills, WI. Petitioner's expert made positive adjustments because this property was older than the subject, had lower ceilings, had very few loading docks (four compared to forty-three), and was not in good shape with a leaking roof and outdated mechanicals. He made negative adjustments because this property was in a better location with larger labor force, was smaller, and had more office space. This sale was listed as a valid sale in the Department's database. However, at the time of sale, it needed $1 million of deferred maintenance. Although the expert did adjust the sale price upward, such a large amount of deferred maintenance (62% of value) raised questions about the subject's condition.

13. Petitioner's Comp 2: Menasha, WI. This former diaper plant had been vacant for several years prior to sale; it was older, had insufficient parking, fewer docks, and lower ceilings. Its location was better than the subject, being much closer to Appleton, but this property was in poor condition. Because its highest and best use was redevelopment by an investor into a multi-tenant rental property, we find this sale was not reasonably comparable to the subject.

14. Petitioner's Comp 3: Two Rivers, WI. This older turkey-processing plant had low ceilings and was inferior in terms of age and condition but was superior in terms of size and location. It was purchased by an owner-user. For reasons that remained unclear, this sale was not listed as a qualified sale in the DOR database.

15. Petitioner's Comps 4: La Crosse, WI. This sale occurred in 2004. This sale is simply too stale for comparison. Moreover, the property was partially (56%) leased at the time of sale, was under investigation for environmental issues at the time of sale,[4] and was sold for redevelopment for multi-tenant use.

16. Petitioner's Comp 5: Superior, WI. This sale also occurred in 2004 and as such is stale. The property appears to have been sold out of a bankruptcy situation and required quite a bit of deferred maintenance. It was not owner-occupied but it was sold to an owner-user.

17. Petitioner's Comp 6: Jefferson, WI. This sale was also used by the Department for comparison. Petitioner's expert adjusted this sale significantly downward for location and because it was newer, more modern, had large bays and better construction, and was presumed to be in better condition. However, its ceilings were lower and the Department contended that it was actually in inferior condition.

18. Petitioner's Comp 7: Inver Grove Heights, MN. This property sold to a private investment group who planned to continue a multi-tenant use. In addition, this Minnesota property was older and suffered from significant deferred maintenance issues, including a portion of the building which would be razed.

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[4] The environmental issues were ultimately dismissed but not until after the time of sale.

19. Petitioner's Comp 8: South Beloit, IL. This property, located near the southern Wisconsin border, was in a much better location and was acquired by an owner-user; however, it was older and less functional than the New Plant.

Petitioner's Comparable Sales for the Old Plant

20. Of the five comparable sales presented by Petitioner's appraiser for comparison with the Old (Downtown) Plant, none had occurred in Wisconsin.

21. Petitioner's Comp 9: Lincoln, NB. This sale involved a small food-processing plant which was in very poor condition. The testimony and evidence were conflicting regarding the fate of this property. Either way, we reject this sale, either because the property was sold as a tear-down simply for land value or because it was redeveloped into multi-tenant with a pub and apartments, which would be a change in highest and best use.

22. Petitioner's Comp 10: Ligonier, IN. This sale involved a small food-processing plant which was reasonably comparable to the Old Plant. Petitioner's expert adjusted upward because it was older and downward for its superior location and office space. The property had very low ceilings, and there was a possible, although not significant, flood issue.

23. Petitioner's Comp 11: Gibbon, NB. This small former turkey-processing plant had been shut down for two years before this plant was sold. Petitioner's expert adjusted this sale downward for superior location and size, but did not adjust upward for condition. We reject this sale based upon the extensive upgrades would be necessary to regain USDA status and, more importantly, the fact that the

seller was a bank, indicating a distressed or foreclosure sale which in turn would indicate a lower selling price than would be obtained through an arm's-length transaction.

24. Petitioner's Comp 12: Marshall, MN. We reject this 2004 sale as stale.

25. Petitioner's Comp 13: Hartington, NB. This Nebraska property was smaller than the subject. It is otherwise fairly similar to the subject, though it had fewer truck docks (four compared to forty-three). It may, however, have been vacant for several years prior to the sale. This sale took place in 2006, five years before the first year at issue. We reject this sale as stale.

26. Petitioner's Comp 14: Wells, MN. We reject this 2005 sale of meat-processing plant as not recent enough for comparison. It also sold for in inexplicably low amount ($1.38/SF).

Petitioner's Expert's Methodology

27. Petitioner's expert presented a qualitative adjustment grid which indicated whether his comparable sales were better (+), inferior (-), or similar (o) to the subject. The grid did not provide insight into the amplitude of such difference although some further explanation was contained in his commentary and testimony.

28. Petitioner's expert testified that size and location were his biggest considerations, while market conditions and age were secondary. However, he did not provide any quantifiable specifics as to the weightings of his comparable sales in coming to his opinions.

29. Petitioner's expert did not include the mezzanine areas in his computation of square footage; however, he stated he considered it in coming to his value per square foot so the additional area was indirectly included in the final calculations of value.

30. Petitioner's expert did not provide separate alternate values for the individual parcels which made up the New Plant, but he opined that the allocation would simply be $8/SF for each portion of the New Plant.

City's Expert's Methodology & Comparable Sales

31. The City's expert did not provide separate values for the three individual parcels. He testified that several considerations would go into such calculations, but he stated that he had not made those calculations and had not been asked to do so.

32. The City's expert believed an allocated portion of the purchase price paid by Tree-House Foods for all of the outstanding stock of Sturm Foods was acceptable Tier 1 evidence of the consolidated value of the three parcels. He considered the stock sale an arm's-length sale of the properties although he did not know whether the Sturm properties were marketed to the public and did not consider the business aspects of the sale.[5]

33. The Vice President of TreeHouse testified that no appraisal was done specifically to determine what the Sturm properties would sell for on an open

[5] In March 2010, TreeHouse Foods bought the stock of Sturm Foods which owned these parcels; Sturm is now a wholly owned subsidiary of TreeHouse.

market and that TreeHouse was only interested in the Sturm real estate "as it pertained to the business" they were buying. He explained that TreeHouse otherwise had no interest in obtaining property in Manawa, Wisconsin.

34. The City's expert did not speak with the parties to the Sturm/ TreeHouse sale. He did not look in the Department's database to see whether the sale was qualified. He relied fully on the M-R and 10-Q tax and securities reporting forms. The expert testified that his due diligence also consisted of asking for the purchase agreement and appraisal from which the allocated value was derived. However, he did not receive either document until the time of trial, well after reaching his opinions. The TreeHouse sale appraisal introduced at trial did not include any underlying information from which one could determine how the allocation was derived.

35. The City presented ten recent sales in support of the Tier 1 sale value, all of which were investor-owned leased properties not far from Chicago. The City's comparables were not used by owners, although some were single-tenant. All were primarily warehouses, none involved food-processing, and only one was used for light manufacturing.

36. In researching comparable sales, the City's expert did not know why the Jefferson sale, used by the other two parties, did not come up on his search for comparable sales, although he thought perhaps it was because it was too small compared to the consolidated size of all three parcels.

37. The City's expert did not check his comparable sales against the Department's database.

Department's Comparable Sales for New Plant

38. The New Plant consisted of two parcels; the Department assessed it as such. At trial, the Department supported those assessments by presenting evidence of two separate values for the New Plant, one for the north parcel and one for the south. There was credible testimony that the parcels could be used independently. The values were derived using the comparable sales method. Because the two parcels were somewhat similar in size, use, location, etc., the Department used the same three comparable sales for both parcels. The Department's adjustments were similar for the two properties with some variations.

39. Department's Comp 1: Jefferson, WI. This sale is the same as Petitioner's Comp 6. The Department had better knowledge of the property having been inside the property during two site visits. The Department adjusted downward for its superior location, greater office space, and superior construction. The property was comparable in size to the south parcel of the New Plant; there was a negative adjustment for smaller size as compared to the north parcel. The Department made upward adjustments for lower ceilings, some lack of sprinklers, lack of food-quality finish, and inferior condition.

40. Department's Comp 2: Ashwaubenon, WI. The Department adjusted this paper plant sale downward for its superior location adjacent to Green Bay, smaller size, and superior office space. The Department made upward adjustments for inferior condition, lower ceilings, site coverage, and lack of food-quality finish.

41. Department's Comp 3: Wautoma, WI. The Department adjusted this sale downward for its smaller size and superior office space. The Department made upward adjustments for inferior condition, inferior location, much lower ceilings, and lack of food-quality finish.

Department's Comparable Sales for Old Plant

42. The Old Plant was obviously older and had its own unique characteristics. All the comparable sales were roughly the same size so the Department made no adjustments for size. Comps 2 and 3 were the same comparable sales as the Department used for the New Plant; the adjustments differed in keeping with the comparisons.

43. Department's Comp 1: Baldwin, WI. The Department adjusted this sale downward for its superior location close to the interstate between Eau Claire, WI, and Minneapolis, MN, superior office space and site coverage, and the fact that it was nearly entirely sprinkled. The Department made upward adjustments for inferior condition.

44. Department's Comp 2: Ashwaubenon, WI. The Department adjusted this sale downward for its superior location adjacent to Green Bay, smaller size, higher ceilings, superior office space, superior condition, and the existence of sprinklers. The Department made upward adjustments for inferior condition and inferior site coverage.

45. Department's Comp 3: Wautoma, WI. The Department adjusted this sale downward for its superior condition, superior site coverage, and the fact the

property was sprinkled. The Department made upward adjustments for inferior office space and inferior location, which was slightly even more remote than Manawa.

ASSESSMENTS AND THE EVIDENCE

46. The Department's assessments and appraised values introduced at trial for 2011 through 2013 were as follows:

Parcel	2011 Assessment	Dep't Trial Evidence
Downtown Plant (old)	$2,171,400	$2,103,800
1310 Industrial Drive (south)	$4,528,000	$5,557,800
1250 Industrial Drive (north)	$11,555,000	$10,733,900

Parcel	2012 Assessment	Dep't Trial Evidence
Downtown Plant (old)	$2,100,000	$2,103,800
1310 Industrial Drive (south)	$4,528,000	$5,557,800
1250 Industrial Drive (north)	$12,420,000	$11,665,300

Parcel	2013 Assessment	Dep't Trial Evidence
Downtown Plant (old)	$2,100,000	$2,103,800
1310 Industrial Drive (south)	$4,828,000	$5,557,800
1250 Industrial Drive (north)	$12,497,000	$11,665,300

47. Petitioner's appraisal viewed the Industrial Drive properties in tandem; however, the expert testified that the values could be allocated to each parcel based upon square footage.[6] His opinions of value were as follows:

[6] Petitioner's expert explained that he would allocate value to the individual parcels at $8/SF based upon appropriate square footage, which were 283,900SF for the south parcel and 563,288SF for the north parcel. The Commission was left to do the calculations.

Parcel	2011 Value
Downtown Plant (old)	$910,000
Consolidated Industrial Drive	$6,300,000

Parcel	2012 Value
Downtown Plant (old)	$865,000
Consolidated Industrial Drive	$6,400,000

Parcel	2013 Value
Downtown Plant (old)	$865,000
Consolidated Industrial Drive	$6,400,000

48. The City's appraisal offered only a consolidated for the three Strum properties. The City asks for the assessments to be raised to these total values:

Year	Consolidated Value
2011	$32,868,000
2012	$32,210,000
2013	$31,566,000

CONCLUSIONS OF LAW

1. The Department did not present evidence to support its full assessments for four of the nine assessments at issue in this case. In addition, there were inconsistencies in the Department's adjustments and descriptions of its comparable sales. The presumption of correctness was rebutted.

2. The 2010 stock sale of the Sturm Foods business was not a valid arm's-length sale of the Sturm Foods parcels; it did not conform to recent arm's-length sales of reasonably comparable property. The allocated values based upon the transaction were not valid Tier 1 evidence.

3. The City's comparable sales were not valid Tier 2 evidence because the properties had different highest and best uses and were not reasonably comparable to the Sturm properties.

4. Petitioner failed to produce sufficient credible evidence to meet its burden of persuasion. The Department presented more credible evidence of value; its evidence was sufficient to support its assessments for the years in question.

5. The Department's assessments are upheld to the extent of amounts proven at trial.

OPINION

This case involves the assessment for property tax purposes of an industrial complex in Manawa, Wisconsin. The property owner, Petitioner Sturm Foods, challenged the Department's property tax assessments of three tax parcels for the years 2011, 2012, and 2013. The City objected to Petitioner's challenge and so has joined these cases.

We begin by setting set forth the standards by which we judge the evidence; then we analyze the evidence to determine whether the Petitioner has met its burden.

A. Legal Standards

Wis. Stat. § 70.32 Real Estate, how valued.

(1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In

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

Assessments by the Department are presumed to be correct and the burden is upon the taxpayer to prove by clear, convincing, and satisfactory evidence in what respects the Department erred in its determinations. *Ashley Furniture, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-747 (WTAC 2013). If there is any credible evidence that may support the assessor's valuation in any reasonable view, the valuation must be upheld. *Universal Foods Corp. v Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-316 (WTAC 1997).

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

Valuation Methodology

Before considering the specifics of valuation, we must determine the highest and best use. The *Wisconsin Property Assessment Manual* ("WPAM") explains

that all property must be assessed at its "highest and best use" regardless of the assessment approach utilized by the assessor. The manual defines a property's highest and best use as "that use which over a period of time produces the greatest net return to the property owner."

Although the parties stated that they agree on the light industrial/food processing/warehousing uses of these properties, the City, without explicit declaration, appeared to espouse an income-generating leased use as a highest and best use. We reject that suggestion for the Sturm properties and find that the owner-occupied light industrial/food processing/warehousing use to which these properties are currently put is the highest and best use.

In Wisconsin, those valuing properties must adhere to what is often referred to as the *Markarian* hierarchy. The Wisconsin Property Assessment Manual, echoed in the *Markarian* decision, sets forth a three-tiered methodology for assessing real estate property value: (1) First Tier - Evidence of a recent arm's-length sale of the subject property is the best evidence of full value, (2) Second Tier - If the subject property has not been recently sold, then an assessor must consider sales of reasonably comparable properties, (3) Third Tier - Only in situations where there has been no arm's-length sale of the subject property and there are no reasonably comparable sales may an assessor use one of the third-tier assessment methods. WPAM, Ch. 7; *Nestle USA, Inc., v. Dep't of Revenue*, 2011 WI 4, ¶ 401-403, 331 Wis. 2d 256, 795 N.W.2d 46, citing *Markarian v. City of Cudahy*, 45 Wis. 2d 683, 686 (1970).

B. Analysis -- The City's Case

Although we have rejected the City's highest and best use above, we nevertheless address the City's claim that Tier 1 evidence of value exists. The Wisconsin Statutes allow for the use of a recent sale as evidence of value under certain circumstances. Specifically, the recent sale must conform to recent arm's-length sales of reasonably comparable property. Wis. Stat. § 70.32.

In March of 2010, TreeHouse Foods bought Sturm Foods' entire business for approximately $660,000,000 by purchasing all of the stock of Sturm Foods. Following the sale, the companies' tax and securities filings allocated approximately $33,000,000, or 5%, of the overall sale price collectively to the three Sturm Foods parcels. The City contends that the allocated figure qualifies as Tier 1 evidence of value. We disagree for several reasons.

First, through the transaction, TreeHouse bought all the stock of Sturm Foods; thus, Sturm Foods became a wholly owned subsidiary of TreeHouse. At the time of the transaction, Sturm Foods owned the three parcels at issue in these cases. The ownership of the owner of the parcels, Sturm Foods, changed by virtue of the stock sale, but the ownership of the parcels did not. Without a sale of the parcels themselves, no Tier 1 evidence can exist.

The ownership of the owner of the parcels, Sturm Foods, changed by virtue of the stock sale, but the ownership of the parcels did not. Here, the real property was a nearly insignificant aspect of the stock sale of Sturm's private label food

production business. Without evidence of a sale of this real estate unbundled from the multi-million dollar business transaction, we find no Tier 1 evidence exists.

Second, assuming for the sake of argument that a sale of the parcels did take place, the *Markarian* rule requires the recent sale to be arm's-length. The property must have been offered to the general public for sale to be considered an arm's-length sale. *See JL French LLC v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-845 (WTAC 2014). In this case, there was no evidence that these parcels were marketed to the public, and the parties did not negotiate and agree to a selling price for these specific properties. There was no proof that the allocated value was representative of what willing buyer would have paid a willing seller for these particular parcels as is required under *Hormel Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-741 (WTAC 2004) and other Wisconsin caselaw.

TreeHouse was not a valid buyer with respect to these three parcels. TreeHouse purchased the Sturm Foods business via a stock purchase transaction. TreeHouse had no desire to purchase real estate. In fact, TreeHouse's Vice President testified that his company purchased Sturm Foods as part of the larger business acquisition and that, "on a standalone basis, [TreeHouse] wouldn't be interested in real estate located in Manawa." A hand-written note on the Houlihan Report from the sale echoed that sentiment: "We inherited the location. It's not where we would choose to be." The actual purchaser was not a willing buyer on any type of open market. Thus, the allocated values are not reflective of an arm's-length sale.

Third, while an allocation may at times be acceptable for determining value, this case is built on too much speculation. The City stressed that the allocation was based upon an "appraisal" done in conjunction with the sale. However, the City's appraiser then admitted he had never seen that "appraisal" prior to the trial. The allocated values came from a "Valuation Analysis" created by Houlihan Lokey, an investment banking firm. The Houlihan Report, as it pertains to these properties, essentially consists of eight Power Point slides; it contains a brief statement indicating Houlihan used both the cost and sales comparison approaches and that "supporting schedules are available upon request." The author of the report was not called to testify as to the validity of or methodology employed to generate the conclusions, nor were any supporting schedules or other underlying documentation introduced.

Moreover, the values, as allocated in the Houlihan Report, were determined by not one but two levels of allocation, first as an allocation of approximately 5% of the $660,000,000 business sale to the group of Sturm parcels as a group, then again further dividing that $33,000,000 into two values over the three parcels. No calculations were offered to illustrate the allocation of value between the individual parcels of the New Plant. The City's expert maintained that only one consolidated value was appropriate and that, although individual values could be calculated, it would be complicated and he had not been asked to do so.

Fourth, the City alleged that Petitioner essentially conceded to the validity of the allocated sale value because Petitioner used the allocated values on its tax and securities filings. The Report indicated that "our fair value conclusions will serve as a

basis for financial reporting purposes and assist TreeHouse management in allocating the purchase price among the acquired assets of Sturm." It appears TreeHouse simply adopted those numbers for the forms it filed. We note that the values assigned in the tax and securities filings were not adopted by the Department, and the values do not appear as valid sale figures in the Department's database. The validity of the filings is not before this Commission; suffice it to say, we do not find them persuasive.

Fifth, the City attempted to support the purported Tier 1 evidence by presenting evidence of what it believed were comparable sales. However, all of these sales involved investor-owned income-producing leased properties; their highest and best uses are not similar to that of the subject properties. The type of buyer who would buy the Sturm properties to use for industrial manufacturing and warehousing is not the same type of buyer who would be a tenant-occupied investment property. Thus, we do not find these sales comparable.

Much of the City's expert's testimony in this regard was based upon language describing what is allowable in the income approach when comparing a subject to leased properties which are renting at market rates. The expert explained that he looked for "some ranges of what rent would be if these properties were leased and at market." The subject property is a user-owned working industrial plant and not a leased property; the property is what is it is, and the goal of the analysis should have been to look at and adjust the comparable sales to be more like the subject, not the reverse.

In terms of actual activity conducted, not one of the City's comparable sale properties was used for food-processing and only one was used even for light manufacturing. In addition, they were for the most part located near the Illinois border or in Illinois itself, all within 50 miles of the Chicago Loop. Although adjustments were made for location as well as for the difference in financial structure, there is just too much difference between an owner-occupied food-processing industrial property in the Fox Valley and leased interests in Kenosha and Chicagoland.

TreeHouse purchased Sturm Foods, the owner of the parcels in question. The 2010 transaction cannot be described as a transaction between a willing buyer of real estate and a willing seller. The witnesses for buyer testified that the buyer did not have any desire to purchase the parcels in question. The parcels were not marketed to the public. The allocated values were rejected for inclusion in the Department's database of valid sales. The sale was a stock transaction to achieve the purchase of a business.

We find the 2010 transaction involving Sturm Foods was not a valid sale of real estate for valuation purposes. Thus, no Tier 1 evidence exists. We reject the City's comparable sales evidence as support for the Tier 1 value and also as Tier 2 evidence of value. We will evaluate the remaining Tier 2 evidence of value below.

C. Analysis - Presumption of Correctness

As noted, the Department enjoys a presumption of correctness. In order to overcome that presumption, Petitioner must prove by clear, convincing, and satisfactory evidence in what respects the Department erred in its original assessments.

As a procedural matter, the City of Manawa made it clear in its initial filings that its chosen role in these cases was to oppose Petitioner's objections to the Department's assessments. Likewise in its brief, the City stressed its contention that Petitioner had failed to overcome the presumption. However, the City then contended that the Department was in error in several respects, primarily because the Department failed to adopt the allocated value from the recent sale as Tier 1 evidence of value. Using the allocation from the 2010 sale of Sturm Foods, the City presented a value so far in excess of the Department's assessment as to contest the presumption of correctness itself. As noted above, we reject the Tier 1 evidence and thus we decline to address the procedural nuance of the City's assertion of error.

Petitioner has asserted several potential points of error. First, Petitioner points out that the Department's evidence did not support the full value of all of the assessments. The Commission has held that the Department's testimony of a lower appraised value was a concession that the higher value on the assessment was incorrect. *See Universal Foods Corp.* For several of the assessments, the Department presented appraisal values lower than the respective assessments: The trial evidence value for the Old Plant was slightly less than the assessed value for 2011, and the evidence regarding the New Plant (north) was lower for all three years. This is error and those assessments are properly capped at the amounts proven at trial. *Id.*

Second, Petitioner asserts that the Department erred in failing to consider recent sales in Menasha and Lake Mills as comparable sales. As noted above, the Department's assessor testified that both those properties were in very poor condition.

We do not believe it was error for the Department to choose other comparable sales instead of these two sales.

Third, Petitioner focuses on the size adjustments and asserts that the sales of smaller properties should be adjusted downward. In principal, that concept is correct, assuming all other factors are equal. Of course, all other factors are not equal and adjustments must be made for other factors as well. The Department's grids showed no size adjustments for sales being compared to the Old Plant. All three comparable sales involved properties somewhat but not a lot smaller than the subject. This difference was a judgment call for the appraising expert. For the New Plant, the testimony and grids showed significant upward adjustments for other characteristics such as ceiling heights, lack of sprinklers, and inferior condition; the net adjustments were positive despite the smaller size of the comparable sale properties.

With respect to the size adjustments on the grids related to the New Plant, we did note one technical error: With respect to the north portion of the New Plant, Comp 1 was half the size of the subject; the Department's expert adjusted Comp 1 downward 15% for size. Comps 2 and 3 were both only about 25% of the size of the building on the north parcel, so one would think there would be a larger adjustment for size, but the Department only adjusted those comparable sales downward only 10%.

Petitioner's size adjustment criticism is further based upon the size differential between the comparable properties and the New Plant as a whole. This point is exaggerated because the Department viewed the New Plant as two separate

parcels. As separate parcels, each parcel was not so different in size from the comparable properties as to negate the comparison.

Fourth, the Petitioner finds fault with the Department's failure to consider the New Plant as one entity rather than two distinct parcels. Petitioner contends that a consolidated approach would affect the choice of comparable sales since the consolidated plant is obviously larger than the two individual properties. Assessment values must be individually entered into the assessment rolls in accordance with the *Wisconsin Property Assessment Manual* and Wis. Stat. § 70.32. Consequently, regardless of consolidated use, in Wisconsin, most parcels are assessed individually. Under Wis. Stat. § 70.28, the Department has the discretion to assess contiguous parcels owned by the same taxpayer in a single assessment; however, it is not error not to do so. We also find, in this case, there was credible testimony that, although the Industrial Drive Plant functioned substantially as a consolidated unit during the periods at issue, the two parcels could theoretically be severed and could function or be sold independently.

Finally, Petitioner alleges some manipulation of parcel descriptions by the Department. We do not find these irregularities significant, recognizing that the Department has discretion to determine what is included in the description of a particular parcel under Wis. Stat. § 70.995(4). Petitioner cites but mischaracterizes the conclusions of the *Domtar* case. *Domtar* found fault with taxpayer's manipulation of the description of what its appraiser should include in the appraisal. In that case, a valuable hydroelectric plant was arguably on two different parcels. There was in inference that Petitioner had attempted to manipulate value by asking his appraiser to

assume the hydroelectric plant was on one parcel not the other, preferring the parcel for which the low assessment was not being appealed. That scenario is very different from an insinuation that an appraiser or assessor has started with a value and manipulated the assessment process to reach that value.

As with most three-day trials, cross-examinations highlighted other minor irregularities. For example, there was disagreement over the precise square footages and acreages. We also noted some inconsistencies between the text of the Department's appraisal property summaries and the adjustment grids.

Taken together, we find the sufficient error sufficient to allow us to consider whether Petitioner succeeded in meeting the lesser burden, that of persuasion.

D. Analysis - Burden of Persuasion

When a taxpayer overcomes the presumption of correctness of the assessments, the taxpayer continues to carry the burden of persuasion. The taxpayer must prove an alternative valuation supported by credible, direct, and unambiguous evidence. *Ashley Furniture; see also Universal Foods Corp.* To evaluate this issue, we compare the evidence and values presented by both Petitioner and the Department to determine which is more credible.[7] *ConAgra.*

If an assessment is in error, the opposing party must present a more accurate value. In this case, Petitioner presented only two values for each year, one for

[7] As noted, we reject the City's evidence because the City's cross-appeal was an objection to the Petitioner's objection rather than an appeal of the assessment itself. We further determined that there was no recent arms-length sale of the subject property so there is no credible Tier 1 evidence of value. Because the City indirectly proposed a different highest and best use and chose sales that were not reasonably comparable to the subject, the City's Tier 2 evidence fails as well.

the Old Plant and one consolidated value for the two New Plant parcels. At trial, Petitioner's expert testified that, in his opinion, the New Plant should be valued collectively at $8/SF. His testimony was clarified to establish that the $8/SF could be applied to the separate square footages of the parcels to obtain individual values for the individual parcels. For the sake of argument, we accept that premise.

Weighing the Evidence of Comparable Sales

In the absence of Tier 1 evidence, the procedures outlined in the state statutes require the parties, if possible, to use the comparable sales method (Tier 2) to estimate value. Although the Department and Petitioner did not agree on which properties were comparable to Petitioner's properties, they did agree that the sales approach is the appropriate method of valuation.[8] We agree.

For the sales approach, parties seek out recently sold properties with characteristics similar to the property at issue. The appraiser or assessor analyzes various characteristics individually and makes adjustments to the value of the comparable to bring it into line with the subject property. For example, if a comparable sale is significantly older or in inferior condition, the per-square-foot sale price of the comparable might be adjusted upward to provide a closer comparison. *See Hormel.*

The parties' valuations differed by virtue of their having compared the subject property to different properties and they made different adjustments. Petitioner's expert introduced eight comparable sales for his analysis of the New Plant and five sales for the Old Plant. The Department used three comparable sales for each

[8] As noted above, we have rejected the Tier 2 sales offered by the City.

of the three parcels. The evidence on both sides made strong points but each also suffered from weaknesses.

Analysis of Petitioner's appraisal is made difficult by the appraiser's choice to use single plus signs and negative signs to indicate without quantification the general direction of adjustment. He did not employ, for example, a double plus for any instances in which a characteristic was extremely better or worse than the subject. We do not, however, view the appraiser's grid as a stand-alone summary of his opinions. The other 50+ pages provided detail and insight, as did the expert's testimony. From that we glean that he placed an extremely large emphasis on the admittedly undesirable location, perhaps resulting in an underweighting of other relevant factors. Another aspect which made it difficult to evaluate Petitioner's expert's opinions was that there was no quantifier of the weightings he assigned to the various sales. Certain other points were somewhat convoluted but were clarified by the expert's testimony; for example, although he did not include the square footage of the limited mezzanine level when multiplying to find total value, the existence of the mezzanine had been taken into account in his value per square foot.

For the New Plant, Petitioner presented eight comparable sales. The Statutes require the comparable sale to be recent. Comps 4 and 5 were both sold too long before to qualify as "recent" sales. Comp 2 was sold for a different highest and best use, redevelopment into a multi-tenant rental property. Several of the sales, most notably Comp 1, had significant deferred maintenance issues.

For the Old Plant, there were no comparable sales offered in the State of Wisconsin. Comps 12, 13, and 14 occurred too long before the periods at issue to be considered "recent" sales. Comp 9 was a tear-down. Comp 11 was a foreclosure sale. Comp 10, an out-of-state food-processing plant, stands as the one comparable sale for the Old Plant.

Without knowing the weight Petitioner's expert gave to each comparable sale, there is no way to know how much influence these sales which we reject had on his opinion of value.

In contrast, the Department's expert opinions were more quantifiable. He indicated precise percentage of upward and downward adjustments for various differences in characteristics and for the weights he assigned to each comparable sale. In addition, the sales themselves reflected more closely the characteristics of the subject properties. Although Petitioner took issue with the Department's choice of comparable sales especially because they were not food-processing plants, we note that several of Petitioner's comparable properties were also not involved in food-processing.

Overall, based upon all the evidence and testimony, the Department's choice of comparable sales and the assessor's adjustments to those sales were generally more credible than those of the Petitioner.

ORDER

Based upon the totality of the arguments of the parties and the evidence presented at trial, as well as caselaw,

IT IS HEREBY ORDERED that the Department's assessments are affirmed as modified to conform to the trial evidence:

Parcel	2011
Downtown Plant (old)	$2,103,800
1310 Industrial Drive (south)	$4,528,000
1250 Industrial Drive (north)	$10,733,900

Parcel	2012
Downtown Plant (old)	$2,100,000
1310 Industrial Drive (south)	$4,528,000
1250 Industrial Drive (north)	$11,665,300

Parcel	2013
Downtown Plant (old)	$2,100,000
1310 Industrial Drive (south)	$4,828,000
1250 Industrial Drive (north)	$11,665,300

Dated at Madison, Wisconsin, this 11th day of December, 2015.

WISCONSIN TAX APPEALS COMMISSION

Lorna Hemp Boll, Chair

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 and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier** within 30 days of this decision if there has been no petition for rehearing, or within 30 days of service of the order that decides a timely petition for rehearing.

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

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

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

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

This notice is part of the decision and incorporated therein.