

STATE OF WISCONSIN
TAX APPEALS COMMISSION

CONAGRA FOODS, INC.,

Petitioner,

DOCKET NOS. 11-M-193,
12-M-015, AND 12-M-227

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 March 10-12, 2014, Chair Lorna Hemp Boll, presiding. The Petitioner was represented by Attorney Margaret M. Derus of Reinhart Boerner Van Deuren S.C., Madison, Wisconsin. The Respondent, the Wisconsin Department of Revenue ("the Department") was represented by Attorney La Keisha Wright Butler at trial and is now represented by Attorney Julie A. Zimmer.¹ Both 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 as modified, finding, concluding, and ordering as follows:

¹ After the trial, this case was reassigned to Attorney Julie A. Zimmer who filed post-trial briefs on behalf of the Department.

FINDINGS OF FACT

A. Jurisdictional Facts

1. ConAgra owns manufacturing property (the "ConAgra property" or the "Property") located at 104 River Road, City of Menomonie, Wisconsin, State Identification Number 79-17-251-R000008118, Local Parcel Number 251-1044-10-000, which is the subject of these cases. ConAgra owned the Property for all of the years at issue. (Partial Stipulation of Facts ("Stip.") ¶ 1 and ¶ 3.)

2. These cases involve Petitioner's objections to the Department's valuations of the Property as of January 1, 2010; January 1, 2011; and January 1, 2012.

3. The Department issued a 2010 Notice of Real Property Assessment for the Property, dated June 21, 2010, to ConAgra. ConAgra timely filed an Objection to the 2010 Real Estate Assessment, dated August 10, 2010, with the Wisconsin State Board of Assessors (the "BOA"). The BOA issued a Notice of Determination of the 2010 assessment for the Property to ConAgra on April 27, 2011. ConAgra timely filed a Petition for Review of the BOA's 2010 Determination with the Tax Appeals Commission on June 17, 2011. (Stip. ¶¶ 5-8.)

4. The Department issued a 2011 Notice of Real Property Assessment for the Property, dated July 5, 2011, to ConAgra. ConAgra timely filed an Objection to the 2011 Real Estate Assessment, dated August 23, 2011, with the BOA. The BOA issued a Notice of Determination of the 2011 assessment for the Property to ConAgra on December 2, 2011. ConAgra timely filed a Petition for Review of the BOA's 2011 Determination with the Commission on January 20, 2012. (Stip. ¶¶ 9-12.)

5. The Department issued a 2012 Notice of Real Property Assessment for the Property, dated June 18, 2012, to ConAgra. ConAgra timely filed an Objection to the 2012 Real Estate Assessment, dated August 9, 2012, with the BOA. The BOA issued a Notice of Determination of the 2012 assessment for the Property to ConAgra on October 1, 2012. ConAgra timely filed a Petition for Review of the BOA's 2012 Determination with the Commission on November 19, 2012. (Stip. ¶¶ 13-16.)

6. The BOA sustained the Department's assessments for 2010 through 2012, and the Petitioner's appeal of those rulings was the subject of the trial.

B. Material Facts

7. These matters concern the assessments for property tax purposes of a 21.80 acre parcel in Dunn County, Wisconsin, which includes a complex of industrial buildings (the "ConAgra plant" or the "Plant").

8. The Plant, originally constructed as a dairy in 1917, produces instant hot cocoa and ready-to-eat pudding cups. It has been expanded and modified in a piecemeal fashion over the years; thus, product flow is not ideal but it is sufficient for the company's needs.

9. The Plant consists of a total building area in excess of 400,000 square feet. Petitioner's figure was 409,824 square feet, while the Department used 427,004 square feet for its calculations. Because the Petitioner's figure was based upon the CAD drawings and was supported by testimony regarding the proper

interpretation of the Manufacturing Real Estate Report (“M-R”²) Forms, we find Petitioner’s square footage more credible.

10. The Plant’s ceilings heights vary but average approximately 20 feet. Both experts believed higher ceilings were superior and adjusted their comparable sales in a similar fashion accordingly.

11. Because of its dairy production processes, the Plant is maintained to a relatively high standard with epoxy paints coating walls, floors, and ceilings for waterproofing, for ease of cleaning, and to avoid bacteria growth. This enables Petitioner to maintain adherence to required USDA and WDA standards.

12. The Plant has some “super-adequacies,” such as upper floors, which are not used but which still must be cleaned and maintained, and excess ceiling heights, which are unused but must be heated.

13. ConAgra’s production process utilizes approximately 600,000 pounds of milk per day. The milk comes from local sources within 40 miles of the Plant. Other significant essential ingredients are also used in production. The oils and sugar come from Minnesota, South Dakota, Illinois, and Indiana. There was no testimony regarding the sources, volumes used, or additional details about other ingredients such as cocoa, starch, and flavorings.

14. The Plant is basically landlocked with little to no room for expansion due to its tight boundaries of roads and a set of railroad tracks.

² The relevant tax returns incorporate several types of M-R forms (R-1, R-2, R-3, R-4, and R-5) to outline the new construction, demolition, remodeling, and other changes to the property. For the sake of simplicity, we refer them all generally as M-R Forms.

15. The Property is located on the lower west side of Menomonie in an older mixed use area. It is not convenient to the local highways exits; thus, source materials coming in and finished goods must travel through the City of Menomonie.

16. The City of Menomonie is not a large community. It is located approximately 60 miles from the Twin Cities (Minneapolis/St. Paul) at the intersection of State Highways 25 and 29, not far from I-94.

17. The parties agree that the highest and best use of the Plant is continued use as an industrial facility which can utilize the features of the facility; that is, its current use as a dairy processing plant.

18. The following summarizes the various estimates of value of the ConAgra property offered for the years in question:

| Year | Department's Assessment | Department's Evidence at Trial³ | Petition for Review (WTAC) | Petitioner Evidence at Trial |
|-------------|--------------------------------|---|-----------------------------------|-------------------------------------|
| 2010 | \$7,113,300 | \$7,113,300 | \$3,600,000 | \$3,690,000 |
| 2011 | \$7,421,100 | \$7,421,100 | \$3,690,000 | \$3,770,000 |
| 2012 | \$7,594,500 | \$7,594,500 | \$3,690,000 | \$3,850,000 |

19. The Department's assessor, Curt Stepanek, a Property Assessment Specialist, prepared the assessments for all years at issue. He has 10 years of experience and holds an Assessor 2 license from the State of Wisconsin.

³ The Department's sales approach from its 2010 BOA Sales Analysis and Reconciliation Report generated a value actually in excess of the assessment value, so the conclusion/recommendation of the Department was the assessed value.

20. The Department's assessor performed a field audit which included an onsite visit to the Plant in 2004. Based upon that visit and a study of comparable properties, he produced a Sales Analysis and Reconciliation Report ("2005 SARR").

21. The assessor based his 2005 SARR on three comparable sales: one from 1996, one from 1998, and one from 2001.

22. The Department used the 2005 SARR for the 2005 assessment and as its base year for each subsequent year, 2006 through 2010. The assessments for each subsequent year incorporated the prior year's assessment and the Petitioner's M-R Forms along with any notable changes in the economy and any other pertinent information submitted by the Petitioner.

23. Specifically, for 2010 the assessment was directly based on the prior year's assessment, which in turn was based on the assessment for the year before that, and so on. The 2010 assessment was based fundamentally on the assessor's 2004 site visit and his 2005 SARR, which incorporated an analysis of sales occurring between 1996 and 2001.

24. In response to Petitioner's appeal of the 2010 assessment, the Department's assessor performed a new onsite visit and field audit in 2010 and a new sales analysis from which he produced a new SARR ("2010 BOA SARR," Ex. C), reporting the value of the Property as of January 1, 2010.⁴

25. The 2010 BOA SARR credibly supported the 2010 assessments.

⁴ Mr. Stepanek also conducted a cost approach analysis. We note that his cost analysis supports his sale approach but we do not address the specifics of any of the cost approach (Tier 3) evidence because sufficient sales (Tier 2) evidence was presented.

26. The 2010 BOA SARR established a new base year for subsequent assessments. Thus, the 2011 and 2012 assessments at issue were based upon the value established in the 2010 BOA SARR as modified to incorporate the information on Petitioner's M-R Forms for those years.

27. The trial testimony included detailed presentation and questioning regarding the various sales each party had chosen to analyze as comparable to the ConAgra property.

THE DEPARTMENT'S COMPARABLE SALES

28. For his sales comparisons in the 2010 BOA SARR, the Department's assessor searched for large (over 400,000 SF) industrial properties, preferably dairy processing, with comparable effective age of about 20 years. For his research, the assessor used the Department's Sales Database and its supporting Sales Data Worksheets. For 2010, he chose three sales as comparable to the ConAgra property for 2010.

29. Department Sale 1⁵
2008 sale of paper-processing plant, Neenah, WI

The Department's Sale 1 property had a similar size (370,000 SF) and piecemeal design with several buildings and numerous additions over the years. The auditor made a slight upward adjustment for age/condition because it was slightly older and not in as good condition as the ConAgra plant. He also adjusted upward to account for the lack of dairy-level food service quality. He applied a negative

⁵ As a clearer means of differentiating, we have labeled each of the Department's comparable sales as "Sale" and each of the Petitioner's as "Comp." No difference is implied by the use of different terminology.

adjustment for the Sale 1 property's superior office space, for better layout, and for superior ceiling height. The assessor did not adjust for financing, although the Department's sales write-up indicated that the Sale 1 property may have been sold on a leaseback. This sale was weighted at 39%.

30. Department Sale 2
2008 sale of frozen pizza plant, Sussex, WI

The Department's Sale 2 property was a food processing plant (although not dairy) which, like the ConAgra plant, consisted of separate buildings. The assessor adjusted upward for age (effective age 28 as compared to 20), inferior condition, and lack of food service quality. He based downward adjustments on this property's superior ceiling height, superior amount of office space, better layout, and smaller size (227,000 SF) noting that smaller properties sell for higher prices per square foot. We note here that Petitioner also chose this sale as a comparable sale but only for its 2011 and 2012 appraisals. Petitioner's appraiser was asked but could not say why this sale was not part of his 2010 appraisal. This sale was weighted at 26%.

31. Department Sale 3
2007 sale of printing plant, Stevens Point, WI

The Department's Sale 3 property was an industrial property of similar effective age (22 years v. 20 years for the ConAgra plant) and piecemeal construction. The Department's assessor adjusted downward for the Sale 3 property's smaller size (179,000 SF). He also adjusted downward for superior office space and superior layout. He adjusted this sale upward for inferior condition and lack of food service quality. This sale was weighted at 35%.

32. For its calculations, the Department used a square footage value of 427,004 SF for the Plant. The assessor derived this number from his interpretation of Petitioner's M-R Forms. Petitioner's witness, the Plant Engineering Manager, testified more credibly to a square footage value of 409,842 SF based upon CAD drawings and his knowledge of the Plant.

33. All three comparable sales used by the Department were located in municipalities with location residuals close to 100%. Although Menomonie would normally have a location residual of closer to 90%, the Department's assessor assigned a 100% location residual to the ConAgra property based upon its necessarily close proximity to its milk sources. Based upon that assignment, the Department's assessor made no location adjustments to any of the comparable sales.

34. The assessor adjusted all three sales upward equally for food service quality adjustments, although one, the pizza plant, was food-related. It was unclear whether the printing company should have had a larger upward adjustment or whether the pizza plant should have a lesser upward adjustment.

35. The Department's assessor testified that the higher ceiling heights of his comparable properties were superior and that he adjusted them all downward as a result. This was in keeping with similar adjustments made by Petitioner's appraiser to his chosen comparable sales. Thus, we find no issue with the height aspect of the comparisons.

36. The Department's choices of comparable properties were reasonable. Many of the adjustments and the assessor's weightings were calculated by

the computer program used by the Department. There was testimony that the program is widely used and relied upon for reasonable adjustments; the program reasonably assigns greater weights to the least adjusted sales. We do not find the adjustments or weightings unreasonable.

37. The 2010 BOA SARR served as evidentiary support for the 2010 assessment. That SARR, in addition to Reports to the BOA (Exs. G and K) and the testimony of the assessor, were credible evidentiary support for the 2011 and 2012 assessments.

PETITIONER'S COMPARABLE SALES

38. Petitioner's appraiser was Peter L. Morrison of Valuation Research Corporation. He has been valuing property since 1982. He has completed the coursework for membership in the Appraisal Institute. His experience is extensive. Mr. Morrison has been a certified general appraiser in the State of Wisconsin. He was unaware that his license had not been renewed in December of 2013. Upon learning of the governing body's non-receipt of his annual renewal payment, he sent another check to them per their instruction in order to immediately remedy the situation. There was no evidence that Mr. Morrison was not intellectually competent to render an expert opinion in this case.

39. Petitioner's appraiser presented appraisals for each of the years at issue. (Exs. M, N, O.) Each was developed using the sales comparison approach. The 2010 appraisal analyzed six comparable sales, the 2011 appraisal analyzed three sales, and the 2012 analyzed four sales.

Petitioner's 2010 Comparable Sales

40. Petitioner 2010 Comp 1
2008 sale of former dairy processing plant, Perrysburg, OH

This property was sold by ConAgra when it was consolidating operations; it is currently used for warehousing. At the time of sale, the property had been emptied and its equipment auctioned off. Although it was not an operating enterprise at the time of sale, it remained painted with dairy-ready epoxy paints and could have functioned as a dairy processing plant with the addition of new equipment.

The Perrysburg facility was of similar age and had also been used for dairy processing. It was substantially larger than the subject property so Petitioner's appraiser's upward adjustments were reasonable. His significant downward adjustments for design and access were not seriously questioned. There was some dispute as to whether this property was marketed. Petitioner introduced credible marketing agreements to support that a brokerage firm had been retained to assist in a sale. According to a credible CoStar report, however, this property was sought out and purchased by a nearby property owner who had approached the seller directly.

This property was reasonably comparable to the ConAgra property. However, it was not unreasonable for the Department not to include it in its sales analysis because the property was in another state, had been sold by this taxpayer, and the CoStar report reasonably raised a question as to the arm's-length nature of the sale.

41. Petitioner 2010 Comp 2
2009 sale of industrial (not food processing) facility, Sheboygan, WI

This property was a smaller (200,000 SF, about half the size of the ConAgra plant) industrial plant that was not involved in food processing. Petitioner's appraiser reasonably adjusted upward for this property's inferior condition, building heights, and construction. He also reasonably adjusted downward for its superior access and superior design.

There was credible testimony of the similarity of the names of the buyer and seller to indicate that the sale was likely between related parties, and the sale was not included as a qualified sale in the Department's database. Petitioner's own appraiser had heard that the sale was a leaseback; he had used this sale although he admitted that he was not able to confirm the terms of the sale. This sale was arguably reasonably comparable; however, it was not unreasonable for the Department to exclude it from its sales approach.

42. Petitioner 2010 Comp 3
2007 sale of former food processing plant, Green Bay, WI

Like the Perrysburg property (Petitioner's 2010 Comp 1), this comparable sale involved a food processing plant (frozen and canned vegetables) which had been emptied prior to sale. It was of similar size to that of the ConAgra plant. Although it could have been used again for food processing, Petitioner's own appraisal stated that its best use was redevelopment. Because it was no longer being used for manufacturing, the Department had removed this property from its roles. For these reasons, its comparability was suspect.

There was testimony that this property had been on the market for a long time, which would seemingly imply that the sale price might have been lower than one would expect; however, the time on the market should be reflected in the sale price. Petitioner's appraiser discounted the price further testifying that, if this particular buyer had not purchased the property, it would have taken three years to find another buyer and that buyer would have paid substantially less. Based upon that reasoning, Petitioner's appraiser assigned a very large (25%) discount for market conditions. We find the prospective subsequent buyer irrelevant and the large discount speculative. The sale price is what it is because the property did sell when it did. Petitioner's appraiser assigned a weighting of 30% to this sale; that weighting and the large discount skew the Petitioner's appraisal.

43. Petitioner 2010 Comp 4
2008 sale, industrial (not food processing) plant, Menomonie, WI

Petitioner's appraiser chose this sale for its similar location. However, with a building square footage of only 48,000 SF (less than 12% of the size of the ConAgra property), this property was not reasonably comparable. We also note that the Sales Data Worksheets included in Petitioner's appraisal for this property showed an incorrect address. This error did not influence the valuation but did affect the overall credibility of the appraisal itself. Petitioner's appraiser assigned a 10% weighting to this sale.

44. Petitioner 2010 Comp 5
2008 sale, food processing plant, Effingham, IL

This Illinois property was a food processing (donuts) facility. It was relatively small (190,000 SF, less than half the size of the ConAgra property). The facility was much newer (built in 2001) with better access and better construction, all justifying negative adjustments. However, the sale was part of a larger deal, and there was conflicting testimony as to whether the sale was arm's-length because of its having been part of an allocated sale. The testimony that its current assessment was twice the allocated sale price indicated that the allocation, at best, may have artificially lowered the sale price. At worst, this sale was not arms-length and therefore not reasonably comparable. Petitioner's appraiser assigned a 15% weighting to this sale.

45. Petitioner 2010 Comp 6
Listing, industrial (not food processing) facility, Boyceville, WI

Like Petitioner's Comp 4, this listing was so small (66,000 SF or 16% of the size of the ConAgra property) as to bring its comparability into question. More importantly, it is not a sale but simply a listing. As such, it is not Tier 2 evidence of value per the *Markarian* hierarchy. Despite its similar location, this listing is not an appropriate comparable. Petitioner's appraiser assigned a 5% weighting to this listing.

46. The combined weightings of Petitioner's 2010 Comps 4, 5, and 6, the two small properties and the one listing, totaled 30%. We conclude that nearly one-third of the Petitioner's appraisal for 2010 was based upon properties which were not sufficiently comparable to the ConAgra property.

47. Petitioner's 2010 appraisal did not include the pizza plant in Sussex, Wisconsin, which was part of the 2011 and 2012 appraisals. Petitioner's appraiser had no explanation as why he did not find or include the Sussex sale for his 2010 appraisal.

48. For all comparable sales in Petitioner's 2010 appraisal, all the land/building ratio adjustments used the sign wrong (positive when they should have been negative). This error actually skewed the appraisal toward a higher value; that is, the error was in the Department's favor. Nevertheless, it is an error which affects the overall credibility of the appraisal.

Petitioner's 2011 Comparables

49. Petitioner 2011 Comp 1
2008 sale of dairy processing plant, Perrysburg, OH

This is the same sale as Petitioner's 2010 Comp 1 sale. The factual findings regarding this sale are described above.

50. Petitioner 2011 Comp 2
2008 sale of frozen pizza plant, Sussex, WI

This is the same sale as used as the Department's Sale 2. Petitioner's appraiser adjusted this sale downward for such aspects as better heights, better construction materials, and because he believed it was more modern and had a better layout. Petitioner's appraiser reasonably adjusted downward for location, opining that the Sussex industrial park location was superior to the mixed use neighborhood in Menomonie. He adjusted upward only for inferior construction.

As to condition, the Department's evidence was more credible. Petitioner's expert believed that this property was in superior condition, but he conceded that he had not been inside the facility. The Department estimated its effective age at 26 years compared to ConAgra's 20 years. As to condition, the Department relied on a Sales Data Worksheet compiled from information gathered by the Department from actual view of the property around the time of the sale, which indicated such problems as a leaking roof. The facility was older and the Department had better information concerning the condition of this property and its internal inadequacies. Therefore, we find the upward adjustment for condition more credible.

51. Petitioner 2011 Comp 3
2010 sale of vacant food processing plant, Milwaukee, WI

This property had been a food processing plant. It was sold to an investor who resold it a few months later for roughly the same price. It is now occupied by the current owner, a chemical company. The facility is smaller (145,000 SF), newer, more modern, and is located in Milwaukee, justifying the negative adjustments. Petitioner's appraiser did not however account for change in use and current lack of food service quality.

Petitioner's 2012 Comparables

52. Petitioner 2012 Comp 1, 2, and 3

Petitioner used the same comparable sales 1, 2, and 3 for 2012 as discussed above for 2011. The factual findings regarding those sales are described above.

53. Petitioner 2012 Comp 4
2011 sale of food processing plant, LaSueur, MN

This smaller Minnesota plant (131,000 SF) had been used for as a food processing plant. Petitioner's appraiser reasonably adjusted the sale price downward for its smaller size and upward for its lesser quality, construction, design, and other features.

CONCLUSIONS OF LAW

1. ConAgra presented sufficient evidence of error with respect to the assessments to overcome the presumption of correctness for the assessments at issue.

2. 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.

3. We affirm the Department's assessments as to the fair market values of Petitioner's property per square foot:

| | |
|------|-----------------|
| 2010 | \$16.66/sq. ft. |
| 2011 | \$17.38/sq. ft. |
| 2012 | \$17.79/sq. ft. |

4. Because we find Petitioner's square footage figure more credible, we reduce the Department's calculations to reflect a square footage of 409,824 and affirm the assessments as modified:

| | |
|------|-------------|
| 2010 | \$6,827,668 |
| 2011 | \$7,122,741 |
| 2012 | \$7,290,769 |

DISCUSSION

This case involves the assessment for property tax purposes of an industrial complex in Menomonie, Wisconsin. The property owner, Petitioner ConAgra, challenged the Department's property tax assessment for the years 2010, 2011, and 2012.

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

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. 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.

Wisconsin Statute § 70.995 requires the Department to assess manufacturing properties throughout the state. The statutes further require that assessments be made based upon “actual view or from the best information that the assessor can practicably obtain.” Wis. Stat. § 70.32(1). More specifically, the statute requires:

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.

Wis. Stat. § 70.995(7).

The Wisconsin Property Assessment Manual (“WPAM”) sets forth a three-tiered methodology for assessing real estate property value: (1) First Tier - Evidence of a recent arm’s-length sale of the subject property is the best evidence of full value, (2) Second Tier - If the subject property has not been recently sold, then an assessor must consider sales of reasonably comparable properties, (3) Third Tier - Only in situations where there has been no arm’s-length sale of the subject property and there are no reasonably comparable sales may an assessor 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).

In Wisconsin, the parties must adhere to this *Markarian* hierarchy. If the property itself has not recently been sold, the next best method of proving value is the comparable sales method. In this case, both parties contend, and we agree, that

comparable sales existed; therefore, the sales method is the appropriate method of demonstrating value for the Property.

It is against this legal framework that we evaluate the evidence presented at trial.

B. Analysis - Presumption of Correctness

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

The Wisconsin statute governing manufacturing property assessment requires that properties be reappraised on a five-year cycle. Wis. Stat. § 70.995(7). That requirement is echoed in WPAM.

The Department performed an onsite field audit visit of the Property in 2004. Following that visit, the Department used the sales approach to estimate the Property's value. The comparable sales used by the Department took place in 1996, 1998, and 2001. The 2004 site visit and the accompanying 2005 SARR formed the basis for the 2005 assessment of the Property. The subsequent assessments were based upon the 2005 assessment as modified for information contained in Petitioner's annual M-R forms and for any relevant market or economic information, per the process outlined in WPAM.

The years 2006 through 2009 are not at issue in this case. As to 2010, because the Department's most recent field audit visit was in 2004, the property was due for a field audit visit in 2009 in keeping with the statutes and WPAM. The

Department did not perform a site visit and field audit until the March 2011 visit made in conjunction with Petitioner's appeal to the BOA.

The 2010 assessment was based on a field audit visit which was more than five years earlier and beyond the time for onsite audit as outlined in WPAM and the Wisconsin statutes. Moreover, the 2005 SARR incorporated comparable sales as old as 1996. We find the 2010 assessment was not based upon the best information available and was in fact based upon stale information. The 2010 assessment was not conducted in accordance with the statutes and WPAM. This is error. Thus, Petitioner has overcome the presumption of correctness for the 2010 assessment.

In conjunction with Petitioner's appeal to the BOA, the Department conducted a site visit in March 2011 which resulted in the 2010 BOA SARR. The 2010 BOA SARR provided sufficient evidence to sustain the 2010 assessment value at the BOA. The assessment values for 2011 and 2012 were developed using the 2010 assessment value, supported by the 2011 visit and 2010 BOA SARR, and the information contained in Petitioner's annual M-R Forms.

As to the latter years, Petitioner exposed weaknesses in the methodology and adjustments in the Department's 2010 BOA SARR. For example, the assessor used three comparable sales for the 2010 BOA SARR, but he did not personally visit any of the three properties nor did he personally verify any of the sales with the parties or brokers involved.

An additional point of error involved the assessor's square footage figure. Prior to writing his report for the 2010 BOA SARR, the assessor had the Petitioner's

appraisal which was based on a different square footage figure. Although he had access to the CAD drawings and descriptions and was aware of the square footage discrepancy, the assessor chose to use a different figure gleaned from his interpretation of the M-R forms. We find the CAD information more reliable than the somewhat ambiguous M-R forms. Therefore, we find Petitioner's square footage figure more credible. The difference between the figures used was approximately 16,000 square feet. With overall improvements in excess of 400,000 square feet, this is a seemingly small error but it does make a noticeable difference to the bottom line calculation of property value.

As with most three-day trials, other less significant irregularities came to light, but we find the errors discussed above to be sufficient to allow us to consider whether Petitioner succeeded in meeting the lesser burden, that of persuasion.

C. 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*, Wis. Tax Rptr. (CCH) ¶ 401-747 (WTAC 2013). To evaluate this issue, we compare the evidence and values presented by both sides to determine which is more credible.

When comparable sales are available, the procedures outlined in the state statutes require the parties are to use the comparable sales method to estimate value. For this 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 was significantly smaller, recognizing that smaller properties generally command a higher price per square foot, the per-square-foot sale price of the comparable might be adjusted downward to provide a closer comparison.

Although the parties in this case do not agree on which properties are comparable to the ConAgra property, they do agree that the sales approach is the appropriate method of valuation. We agree. The parties' valuations differ by virtue of their having compared the subject property to different properties. For the one sale both sides did use, the parties adjusted the comparable sale in different manners.

The evidence on both sides made strong points but each also suffered from weaknesses. These are described in the Findings of Fact above. Here we will highlight the points we found most convincing.

For all three years, Petitioner placed the most emphasis on the Perrysburg property (Petitioner Comp 1 for all three years), with 30% weighting for 2010, 45% for 2011, and 40% for 2012. We did not find this sale particularly persuasive. There was evidence that the sale may not have been arm's-length. Although Petitioner asserted that this property was on the market and offered a brokerage agreement as evidence, the witnesses who testified were not directly involved in the marketing of the Perrysburg property nor were they involved in the sale. On the other hand, the Department introduced a CoStar report which stated that "the [Perrysburg] property

was not on the market at the time of sale. The buyer previously purchased a nearby property and was aware of ConAgra's ownership of the subject property. They approached the seller directly." In addition, the Perrysburg property was not in use at the time of sale, all of its equipment having been removed prior to sale. It was essentially empty, which presumably led to a lower selling price than that of a comparable factory in production. Petitioner's appraiser made no adjustment for this aspect of the sale.

Petitioner's appraisal for 2010 included a sale in Green Bay as 2010 Comp 3. The property had been a food processing plant (frozen vegetables). One would have expected to see an upward adjustment to bring the Green Bay property up to dairy processing standards. However, when sold, the property was not purchased for continued use as a food processing plant but rather for redevelopment. As such, Petitioner's appraiser adjusted this sale downward stating that the redevelopment use made it superior. We question that conclusion and find the Department's critique more credible. Because the 2010 Comp 3 property sold for a different use, that being redevelopment, we find this sale's comparability questionable.

Petitioner's appraiser also adjusted the price of 2010 Comp 3 sale downward by 25% for market conditions. The property had been on the market for a long period of time. That time frame should already have been reflected in the sale price, so the large downward adjustment was not credible. Petitioner's appraiser speculated that the Green Bay property would have sold for much less and likely not for another three years if this particular buyer had not purchased the property. Those

thoughts are wholly speculative and irrelevant; the property did sell, and the sale price is the sale price. The sales comparison method does not require looking into the possibility of a second subsequent sale. We find the 2010 Comp 3 sale questionable and find the negative 25% adjustment to the selling price speculative.

The 2010 Comp 4 and Comp 6 sales used by Petitioner were both so small (48,000 SF and 66,000 SF respectively compared with the ConAgra Plant at over 400,000 SF) as to be of questionable value for comparison. Petitioner's 2010 Comp 6 raised an additional red flag because it was not a sale at all but a listing for a property in Boyceville, WI. Petitioner's expert weighted the listing 5% in his sales comparison approach, admitting on cross-examination that this was at minor variance with *Markarian* hierarchy methodology.

Petitioner's 2010 Comp 5 involved a property in another state which was part of a larger sale. The amount allocated to the property is not likely to be an accurate estimate of the value of the property.

The common sale used by both sides was a 2008 sale of a former pizza plant in Sussex. Petitioner's appraiser did not include it in his appraisal for 2010 but did include the sale in his appraisals for both 2011 and 2012. Petitioner's appraiser had no explanation as to why he did not include it for 2010 beyond the fact that he just had not come across it in his search, from which we infer that his search criteria may have been flawed.

Finally, for the 2010, Petitioner's expert made a mathematical error which resulted in the adjustments of all the 2010 comparables for land/building ratio having

the incorrect sign. While this error actually moved his figures in the Department's favor, it lessened the overall credibility of Petitioner's appraisal.

For 2011 and 2012, Petitioner's appraiser relied heavily on the Perrysburg property, as discussed above, and on common sale of the former pizza plant in Sussex, Wisconsin. The parties adjusted the Sussex sale similarly for age and other factors, but Petitioner adjusted downward for condition while the Department adjusted upward. Petitioner's appraiser did not view the interior of the Sussex property. The Department's adjustment for condition was more reliable because the assessor who fielded the sale would have seen the interior noting such problems as leaks in the roof, so the Department's conclusion that the Sussex property was in inferior condition was the more credible description.

The Department's case-in-chief focused on the 2010 BOA SARR the Department's assessor created in response to Petitioner's appeal of the 2011 assessment to the Board of Assessors. The 2010 BOA SARR incorporated three comparable sales and echoed the values in the original assessments. His search criteria included large industrial, preferably dairy processing, with effective age of 20 years. Although the assessor did not visit or personally verify the information surrounding the sales used in the 2010 BOA SARR, the sales were listed in the Department's database as good sales and were supported by Sales Data Worksheets. The 2010 BOA SARR served as a basis to sustain the 2010 assessment and as the new base value, as modified for the information contained in the M-R Forms, for the 2011 and 2012 assessments.

For all his comparisons, the assessor changed the location residual for the subject property from 91% to 100%. He based this upon the fact that milk is the primary ingredient used at the Plant. Because milk is a readily perishable good, dairy plants are usually located very close to the source. In this case, Petitioner's milk suppliers were within 40 miles of the Plant.

Petitioner contended that overriding the municipality index of 91% and instead using 100% was unwarranted. The ConAgra plant is located in an area of the state which is not very close to any major highway access and in a part of town that is not overly close to any highway. There was testimony that other ingredients such as oils and sugars are also significant ingredients and that those ingredients come from as far away as South Dakota. However, there was no testimony concerning the volume of sugar and oils used nor the frequency of deliveries, so we cannot conclude that the location was a large hindrance to counterweigh the convenience of the milk suppliers.

We do question the Department's use of equal adjustments for food service quality for both a paper products plant and a pizza production facility. It seems a paper products manufacturer would require a higher adjustment or the food processing company would require a lower one. However, this adjustment did not have a large impact on value, and it was unclear which sale should have been adjusted differently.

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 Petitioner.

D. Other Points of Contention

Two more technical arguments rounded out the testimony and the arguments in the post-trial briefs. First, the Department calls into question Petitioner's appraiser's qualifications. Second, touched on at trial and addressed further in the briefs, the Department argues that Petitioner conceded land value so the only issue in dispute should be the value of the improvements. We address both arguments here but do not give much weight to either of them.

1. Petitioner's Expert's Qualifications

Petitioner's expert was an appraiser who had been valuing properties since 1982. Counsel for Petitioner elicited testimony of the appraiser's education, qualifications, and experience. The appraiser had been affiliated with Valuation Research Corporation since 1994. His course work was complete for his candidacy for membership in the Appraisal Institute. Counsel asked to the Commission to designate the appraiser an expert. The Department was asked and voiced no objection. The Commission so ruled and then proceeded to hear the appraiser's expert testimony.

Later the same day, the Department opened its cross-examination by impeaching the appraiser's credentials, showing that the Wisconsin Department of Safety and Professional Services listed the appraiser's current license status as "expired." The site showed his license as current only through December 14, 2013. His reports for this case were all dated February 17, 2014.

It was obvious to all present that Petitioner's expert had no idea that his license had expired. He testified that he was certain he had renewed his license.

Petitioner offered rehabilitating testimony the following day, after some research into the matter. Petitioner's appraiser had contacted the Wisconsin Department of Safety and Professional Services and had been told his payment for renewal had not been received. Petitioner had a record of the check that had been written, but his bank records showed the check had never been cashed. There was no explanation as to why the check had not reached the Wisconsin Department of Safety and Professional Services. The appraiser expressed his intent to complete the replacement forms and remit them with payment immediately. There was no evidence on which to believe this was more than a clerical error. The fact that his check had not reached the Wisconsin Department of Safety and Professional Services did not negate his wealth of education and experience. This clerical error did not disqualify this expert's testimony before the Commission.

The Department also focused on the appraiser's familiarity with the *Markarian* hierarchy. The Department reached back to Petitioner's appraiser's deposition for impeachment purposes. It was evident, however, that Petitioner's appraiser, who is not from Wisconsin, was familiar with the appropriate methodology; he simply had failed to recognize the name given to the hierarchy in Wisconsin case law. More importantly, the appraiser, with the exception of the inclusion of one listing discussed above, presented an appraisal in keeping with Wisconsin's *Markarian* hierarchy.

2. *Scope of Petitioner's Appeal*

The Department attempts to hold Petitioner to the Department's estimate of value for the land components of the assessments because Petitioner did not propose a value different from the Department's value on the Objection Form. The forms ask for the full value to be broken into components of land and improvements. On the forms, Petitioner's estimated land values mirrored those of the Department; the difference came only with respect to the value of improvements. Thus, the Department argued that Petitioner did not object to or appeal the land valuation. This Commission recently considered and rejected this very argument in *Sanmina v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) 401-952 (WTAC April 22, 2015). For the reasons stated in the *Sanmina* decision, we again reject the argument here. One cannot appeal a singular component of manufacturing property assessments.

ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that the Department's assessments are affirmed as modified to reflect a square footage of 409,824 square feet as follows:

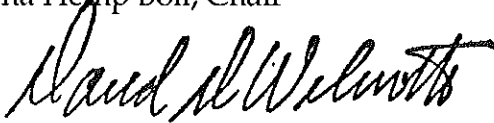
| | |
|------|-------------|
| 2010 | \$6,827,668 |
| 2011 | \$7,122,741 |
| 2012 | \$7,290,769 |

Dated at Madison, Wisconsin, this 1st day of June, 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.