

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**MERIDIAN EAU CLAIRE LLC**  
c/o Hutchinson Technology Incorporated  
2435 Alpine Road  
Eau Claire, WI 54703,

**DOCKET NO. 02-M-86**

Petitioner,

vs.

**DECISION AND ORDER**

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

Respondent.

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**DIANE E. NORMAN, COMMISSIONER:**

The above-entitled matter was heard by the Commission on March 16-19 and April 7, 2004, in Madison, Wisconsin. The parties submitted post-hearing briefs. On briefs for petitioner are Attorney Joseph A. Pickart and Attorney Robert L. Gordon of Michael Best & Friedrich LLP, Milwaukee, Wisconsin, and on brief for respondent is Attorney Lisa Ann Gilmore.

Having considered the entire record before it, the Commission finds, decides, concludes, and orders as follows:

**FINDINGS OF FACT**

1. Hutchinson Technology Incorporated ("HTI"), as lessee under the leaseback agreement described below, is required to pay all property taxes on the subject property. The owner of the subject property during the period under review, Meridian Eau Claire LLC ("petitioner"), is a separate entity from HTI.

### **Jurisdictional Facts**

2. Petitioner, in care of HTI, timely filed its Wisconsin manufacturing real estate tax return for the year 2001. An attachment to the tax return stated that petitioner's estimate of the total value of the subject property as of January 1, 2001 was \$5,550,000.

3. On June 14, 2001, respondent issued to petitioner a Notice of Real Property Assessment stating that the assessed value of the subject property was \$333,200 in land and \$7,540,900 in improvements, for a total assessed value of \$7,874,100.

4. Petitioner, in care of HTI, timely objected to the assessment by filing a "Manufacturer's Form of Objection to Property Assessment" with respondent's State Board of Assessors on August 15, 2001.

5. On March 28, 2002, the State Board of Assessors issued a Notice of Determination denying petitioner's appeal and affirming the total value of the subject property at \$7,874,100.

6. On May 24, 2002, petitioner, in care of HTI, timely filed with the Commission a petition for review from the State Board of Assessors' determination of the subject property's real estate assessment for January 1, 2001.

### **Description of Subject Property**

7. HTI is a high-tech manufacturer of parts for use in computers. HTI was founded in Minnesota in 1965 and became a publicly traded company in 1985. Its principal product is a "suspension assembly", which houses each recording head in a computer disk drive. HTI is the only domestic manufacturer of this product, and it has

approximately a 60% share of the worldwide market.

8. The property at issue in this proceeding (“subject property”) is petitioner’s assembly plant in Eau Claire, Wisconsin.

9. The assembly plant sits on a 17.82-acre site. The improvements on the subject property consist of a one-story, high-tech manufacturing assembly plant with an attached two-story office building. The gross building area of 157,284 square feet is made up of approximately 38% open manufacturing, 25% manufacturing support, 30% finished office space, and 7% kitchen and cafeteria.<sup>1</sup>

10. Construction of the building on the subject property began in March of 1995 and was completed in April 1996. The total cost of construction (including land) was reported by petitioner to respondent as \$15,322,400.

11. Since the facility on the subject property was completed, there was a drop in demand for HTI’s products because of technological advances in the computer industry. Because of this drop in demand, the subject property facility has never been fully utilized.

12. The parties have stipulated that the value of the land for the subject property is \$520,000.

13. Both parties’ expert witnesses determined the highest and best use of the subject property to be its continued use as a high-tech manufacturing facility.

14. HTI purchased the land for the subject property (and

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<sup>1</sup> There are two adjacent properties owned by petitioner that are not part of the subject property and not a subject of this proceeding.

adjoining parcels that are not the subjects of this matter) by a deed on March 16, 1996.

### **Sale-Leaseback Transaction**

15. On May 1, 1996, HTI transferred ownership of the subject property to petitioner in a sale-leaseback transaction.

16. Ruth Bauer, treasurer of HTI,<sup>2</sup> testified regarding the decision of HTI to enter into the sale-leaseback transaction. At the end of 1994, HTI wanted to expand its operations and open an assembly plant in Eau Claire, Wisconsin. HTI chose to finance the new assembly plant by employing a sale-leaseback transaction.

17. A sale-leaseback transaction is the sale of real property along with a simultaneous long-term lease of the same real property back to the seller.

18. The sale-leaseback transaction had advantages over a more traditional mortgage for financing the subject property. First of all, HTI would be able to obtain more cash from a sale-leaseback transaction, and the company was short on cash reserves. Second, this transaction would appear as a lease expense on HTI's balance sheet instead of a long term debt, thereby improving HTI's debt-to-equity ratio on its balance sheet.

19. The sale-leaseback transaction allowed HTI the security of remaining in the property, because the transaction was simultaneous with a long-term lease of 15 years with four options to renew the lease for 5 years each.

20. HTI's treasurer testified that HTI never listed the subject property with a real estate broker.

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<sup>2</sup> Ms. Bauer has been employed by petitioner since 1985. She has a bachelor of science degree in accounting and has been treasurer with the company since 1996. Among other accounting positions she has held with the company, she was the assistant treasurer from 1990 until 1996.

21. HTI's treasurer testified that HTI considered various investors for the sale-leaseback transaction. HTI ultimately selected the Told Corporation, a firm recommended by HTI's legal counsel. The Told Corporation set up petitioner as an LLC specifically for the sale-leaseback transaction, and petitioner became the purchaser/lessor of the subject property.

22. No appraisal was completed by either petitioner or HTI to determine the fair market value of the property prior to the sale-leaseback transaction. The sale of the subject property was simultaneous with the long-term lease, and the purchase price of \$15,300,000 was based upon the construction costs of the subject property.<sup>3</sup>

23. HTI presented Stephen VanderBloemen as an expert witness regarding this sale-leaseback transaction. Mr. VanderBloemen is a certified public accountant practicing generally in the area of building and construction companies. He had reviewed the sale-leaseback transaction in this case and concluded that the sale price of the subject property was not based upon fair market value but rather on the cost of new construction of the building. The construction cost of the new building was used as the basis for the sale price as well as the basis for the long-term lease payments because that is allowed under the Financial Accounting Standards Board (FASB) 90% rule. This rule provides that if long-term lease payments exceed 90% of the subject property's value, the lease will be considered a long-term debt and not an operating lease. The 90% rule allows the cost of a new building to be used as a basis for a long-

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<sup>3</sup> The sale price of \$15,300,000 was reported to the State of Wisconsin on the Real Estate Transfer Return (Exhibit 3). While the return states that this was a sale of real property, the return does not state that the sale price was for the fair market value of the subject property.

term lease and still qualify as an operating lease.

24. Respondent's expert witness, Steven M. Larrabee, is a certified assessor for the State of Wisconsin and the manager of respondent's Western District assessment office. Mr. Larrabee testified that the sale price in the sale-leaseback agreement was the fair market value of the subject property. Mr. Larrabee testified that he spoke to a person at petitioner identified as a "principal of [T]old Meridian" who said that the sale of the subject property was an arm's-length sale for fair market value. Mr. Larrabee further testified that the individual told him that he "believed" that it had been marketed through a broker in Chicago. However, Mr. Larrabee also testified that the information regarding the property being marketed through a broker in Chicago may have been in error. The only other evidence regarding the market exposure was Mr. Larrabee's testimony that "it would appear that there was marketing activity that was happening, apparently, for three months." (April 7, 2004 Tr., p. 13, l. 7-8.)

25. Mr. Larrabee also relied upon the real estate transfer tax return to show that this was an arm's-length transaction. The real estate transfer tax return indicated that the sale was financed by a third party, Northwestern Mutual Life. Mr. Larrabee testified that HTI did not participate in the financing for this property.

26. The subject property was transferred from petitioner to the University of Wisconsin on January 1, 1998. This transfer was a donation to the University of Wisconsin. This was not a fair market value sale and was subject to the long-term lease with HTI. An appraisal was completed at the time of the donation to the University of Wisconsin and referred to in respondent's appraisal, but this value was not relied upon by Mr. Larrabee in respondent's appraisal for valuing the subject

property.

### **Respondent's Appraisal**

27. For 2001, the year at issue, respondent assessed the subject property at \$7,874,100.<sup>4</sup> After petitioner objected to the assessment, an appraisal dated March 19, 2002 was completed by respondent. This appraisal valued the subject property at \$8,204,700<sup>5</sup> (Exhibit F). Because respondent is prohibited from increasing assessments at the State Board of Assessors' level, the appraisal recommended sustaining the original assessment of \$7,874,100.

28. Respondent's appraisal was authored by Judith D. Reiter, one of respondent's certified assessors ("the assessor"), and Mr. Larrabee.<sup>6</sup> Mr. Larrabee was the principal author of the appraisal.

29. The assessor was listed as a witness for petitioner<sup>7</sup> and was served with a subpoena prior to the hearing for this matter, but the assessor did not appear at the first day of the hearing. Trial counsel for respondent stated that the subpoena served upon the assessor was defective, as the assessor was not given the costs of the subpoena and travel expenses as required by statute. Counsel for petitioner proffered costs and travel expenses at the hearing, but trial counsel for respondent refused them. The Commission adjourned the hearing, and during the adjournment, trial counsel for respondent agreed to produce the assessor to testify at the hearing the following day. The assessor did appear for the second day of the hearing and testified as a witness for

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<sup>4</sup> This assessment is the total of land value of \$333,200 and improvements value of \$7,540,900.

<sup>5</sup> This appraisal value is the total of land value of \$333,200 and improvements value of \$7,871,500.

<sup>6</sup> Mr. Larrabee did not sign the appraisal as an appraiser but as having reviewed and approved the appraisal. However, both he and the assessor testified that they both prepared the appraisal.

<sup>7</sup> The witness and exhibit lists were received by the Commission and respondent on March 2, 2004 for the hearing set to begin on March 16, 2004.

petitioner. Trial counsel for respondent did not object or cross-examine the assessor regarding any lack of preparation to testify at the hearing, nor was any request made on the record to allow the assessor additional time to prepare for the hearing.

30. When asked during cross-examination whether he had a bias in this matter, Mr. Larrabee testified that he had an interest in the outcome of the hearing, in that he represented respondent and he wanted the appraisal amount in respondent's assessment to be upheld. He also testified that he discussed preparation for the hearing with counsel for respondent.

31. Respondent's appraisal employed the sales comparison approach, the cost approach, and the income approach for valuing the subject property.

32. By using the cost approach, Mr. Larrabee concluded the value of the subject property on January 1, 2001 to be \$7,898,000 (land at \$333,200 plus improvements at \$7,564,800). He reached this total by taking the construction costs from 1996 and reducing that number by 12% for physical depreciation, 0% for functional obsolescence, and 40% for economic obsolescence.

33. By using the income approach, Mr. Larrabee concluded the value of the subject property on January 1, 2001 to be \$8,674,300 by using the lease income from the subject property. No other leases from comparable properties were considered for this approach.

34. Ultimately, Mr. Larrabee determined that the sales comparison approach was the most reliable indicator of value, and relied upon that approach to the exclusion of the other approaches. By using the sales comparison approach, Mr. Larrabee concluded the value of the subject property on January 1, 2001 to be

\$8,204,700.

### **Respondent's Comparable Sales**

35. Respondent's Comparable Sale 1 is a Rayovac office building in Madison, Wisconsin, with no manufacturing capabilities that sold on July 14, 1999. Mr. Larrabee and the assessor both testified that this was the least reliable comparable sale and was only included as a comparable sale because it had once been sold in a sale-leaseback transaction. This sale was offered to show that a sale-leaseback transaction can be a fair market value sale because the sale-leaseback sale value was consistent with a later sale value. Mr. Larrabee testified that this comparable sale was not comparable property to the subject property.

36. Respondent's Comparable Sale 2 is the sale of the subject property on May 1, 1996 as part of the sale-leaseback transaction. Respondent's appraisal reduced the \$15,300,000 sale price by 40% for economic obsolescence to reflect a downturn in the market for HTI's products.

37. Respondent's Comparable Sale 3 is the sale of the 3-M high-tech manufacturing plant near the subject property in Eau Claire. Mr. Larrabee testified that this sale was given the most weight in determining the subject property's value.

a. The reported sale price of this property was \$23,600,000. Mr. Larrabee contacted the owner of this property to verify the sale price. He received a letter from the company stating that the reported sale price included other property, and that the correct sale price of land and building alone should have been \$5,798,800 (Exhibit 8).

b. Mr. Larrabee testified that he determined the sale price of this comparable sale to be \$7,953,700 for land and improvements based upon an appraisal that was not entered into evidence.<sup>8</sup> There was no other evidence to support this conclusion that the sale value of this property was \$7,953,700.

### **Petitioner's Appraisal**

38. HTI presented the expert testimony and written report of Frank Fehribach, a certified appraiser with American Appraisal Associates (petitioner's appraiser). Petitioner's appraiser testified that he had no interest or bias regarding the subject property. A second appraiser with American Appraisal Associates contributed to the appraisal by gathering data, but that appraiser did not testify at the hearing.

39. Petitioner's appraiser concluded that the fair market value of the subject property as of January 1, 2001 was \$5,500,000. In reaching that conclusion, petitioner's appraiser also employed the cost approach, the income approach, and the sales comparison approach to value the subject property.

40. By using the cost approach, petitioner's appraiser concluded that the value of the subject property was \$5,700,000. He defined the cost approach as the cost of reproducing or replacing the property, less depreciation from physical deterioration, functional obsolescence, and economic/external obsolescence. He concluded the value under this approach by determining the cost to construct in 1996, trending the costs up to reflect the costs as of December 31, 2000 (a value of \$13,253,788

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<sup>8</sup> Both petitioner and respondent make detailed arguments in their briefs regarding this appraisal, but the details of this appraisal were not considered as it was never admitted as evidence in this matter.

for the building and \$798,801 for land improvements, for a total of \$14,052,589), and subtracting for physical deterioration and functional obsolescence (a reduction of \$8,685,848 for the building and \$199,700 for land improvements). Finally, he added back in the value of the land at \$520,000, for the rounded-up value of \$5,700,000.

a. Petitioner's appraiser defined functional obsolescence as the special features of the building that are unique as it is being used and would not be marketable on the open market. This was broken out into functional incurable obsolescence and functional curable obsolescence.

b. Functional incurable obsolescence is the super-adequacies of the building such as excessive electrical capacity, plumbing, special interior wall and floor finishes, and HVAC systems that were installed for the current use but not recognized as adding value to the structure. Petitioner's appraiser determined the functional incurable obsolescence by using a computerized commercial valuation system that provided replacement costs for light industrial manufacturing buildings, adjusted to construction costs in the Eau Claire, Wisconsin, area.

c. Functional curable obsolescence is the overall building utilization that would have to be reconfigured for other uses by a potential purchaser of the building. Petitioner's appraiser determined the functional curable obsolescence by estimating the cost of reconfiguring the building for an alternative user.

d. Petitioner's appraiser did not reduce any of his valuations by economic obsolescence. He concluded that it would be too difficult to measure or break out this amount from functional obsolescence.

41. By using the income approach, petitioner's appraiser concluded the value of the subject property to be \$5,600,000. Petitioner's appraiser also concluded that the income approach was the least useful approach for valuation because there was limited arm's-length lease data available. Petitioner's appraiser did not use the subject property lease for this approach because it was not an arm's-length or market lease, since it was part of the sale-leaseback transaction and based upon the building costs of the subject property. Instead, petitioner's appraiser compared 7 other leased industrial properties within the state of Wisconsin to reach the subject property value of \$5,600,000.

#### **Petitioner's Comparable Sales**

42. As with respondent's appraisal, petitioner's appraiser also concluded that the most reliable approach to valuation of the subject property was the comparable sales approach. Using this approach, petitioner's appraiser concluded that the value of the subject property on January 1, 2001 was \$5,400,000. This figure represented land value of \$520,000 and improvements of \$4,892,544, based upon a rate of \$31 per square foot of building space. The total of \$5,412,544 was rounded down to \$5,400,000.

43. Petitioner's appraisal contains 5 comparable sales:

a. Comparable Sale I-1 is the September 2000 sale of the 3M/Gore facility in Eau Claire. This is the same comparable sale as respondent's

Comparable Sale 3, except that respondent's appraisal employed the sale value of \$5,798,800 stated in Exhibit 8, rather than the higher value stated in the appraisal that was not admitted into evidence. As stated above, this building is also a high-tech manufacturing facility and very similar to the subject property. Petitioner's appraiser adjusted the building value down to make it more comparable to the subject property, because the subject property is partially utilized while the 3M/Gore property is 100% utilized. Petitioner's appraiser made a 25% adjustment downward and valued the building at \$31.86 per square foot.

b. Petitioner's Comparable Sale I-2 is the August 1999 sale of a 176,000 square foot, high-tech facility in Kenosha, Wisconsin. This facility manufactures circuit boards. The facility does not have the need for extra electricity and HVAC equipment as required in the subject property facility, but is a comparable use. The sale of this business also included the purchase of the business operations. After making a downward adjustment from \$41.92 per square foot to account for the purchase of the business operations, petitioner's appraiser valued the building at \$30.77 per square foot.

c. Petitioner's Comparable Sale I-3 is the January 1999 sale of a 179,906 square foot, light manufacturing facility in Stevens Point, Wisconsin. Petitioner's appraiser considered this to be the best comparable sale. This facility manufactures machine parts and does not have the high-tech needs of electricity and HVAC as required in the

subject property facility. However, all parties agreed that this building had super-adequacies or extra qualities because it was built to very high quality specifications. After making upward adjustments from \$19.31 per square foot for the length of time the building stood vacant prior to the sale, petitioner's appraiser valued this building at \$30.42 per square foot.

d. Petitioner's Comparable Sale I-4 is the September 1999 sale of a 142,506 square foot, high-tech facility in Chippewa Falls, Wisconsin. This facility manufactures semiconductors. Petitioner's appraiser adjusted the value of the building upward from \$21.57 per square foot because the seller was motivated to sell quickly and it is located in an inferior industrial park. Petitioner's appraiser valued this building at \$29.73 per square foot.

e. Petitioner's Comparable Sale I-5 is the June 1996 sale of a 103,567 square foot warehouse facility in Germantown, Wisconsin, that sold for \$32.43 per square foot. Petitioner's appraiser adjusted this value downward slightly because of the superior location in a northern suburb of Milwaukee and its smaller size, and valued this building at \$30.05 per square foot.

#### **Petitioner's appraisal value**

44. After comparing the three values of \$5,700,000 (by the cost approach), \$5,400,000 (by the sales comparison approach), and \$5,600,000 (by the income approach), petitioner's appraiser valued the subject property at \$5,500,000, of which \$520,000 was the value of the land.

## APPLICABLE WISCONSIN STATUTES

### **70.32 Real estate, how valued.**

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

### **70.995 State assessment of manufacturing property.**

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

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

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(2a) To prepare, have published and distribute to each property tax assessor and to others who so request assessment manuals. The manual shall discuss and illustrate accepted assessment methods, techniques and practices with a view to more nearly uniform and more consistent assessments of property at the local level. The manual shall be amended by the department from time to time to reflect advances in the science of assessment, court decisions concerning assessment practices, costs, and statistical and other information considered valuable to local assessors by the department. . . .

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## CONCLUSIONS OF LAW

1. The testimony of respondent's assessor, Judith D. Reiter, should not be stricken because she may not have been prepared to testify at the hearing.

2. The testimony of respondent's expert witness, assessor Steven M. Larrabee, should not be stricken because of his stated bias in support of respondent's assessment.

3. The presumption of correctness associated with respondent's assessment has been rebutted as follows:

a. The sale of a business with property used for entirely different purposes from the subject manufacturing property is not a reliable comparable sale.

b. The sale-leaseback of the subject property was not an arm's-length sale for fair market value that could be relied upon as a comparable sale for respondent's assessment.

c. Uncorroborated hearsay evidence of an appraisal that was not entered into evidence cannot be relied upon to prove the sale price or fair market value of a comparable sale.

4. Petitioner has rebutted respondent's presumption of correctness associated with respondent's assessment and met its burden of persuasion by competent evidence to show that the fair market value of the subject property on January 1, 2001 was \$5,500,000.

## OPINION

### **Testimony of Assessor Judith D. Reiter will not be stricken**

Respondent argues that the testimony of the assessor should be stricken because she was not prepared to testify at the hearing. There is no legal basis for this argument, and her testimony will not be stricken.

The assessor was listed as one of petitioner's witnesses in the witness list sent to the Commission and respondent dated March 2, 2004. The assessor was also served with a subpoena to attend the hearing set to begin on March 16, 2004.

The assessor did not appear at the hearing on March 16, 2004, and the Commission was informed at that time that the assessor would not appear because the subpoena was not accompanied with witness fees and travel expenses as required by Wis. Stat. § 885.06 when it was served.

Petitioner proffered the witness fees and travel expenses for the assessor on March 16, 2004, but trial counsel for respondent refused them. The presiding Commissioner adjourned the hearing to allow petitioner to re-serve the assessor with the appropriate fees. Trial counsel for respondent then agreed to allow the assessor to testify the next day without re-service of the subpoena. The assessor did testify at the hearing the next day, March 17, 2004.

The assessor's testimony was highly relevant to this matter. Respondent's case is based upon an assessment of the subject property in which the assessor was one of the appraisers who prepared the assessment and had even signed it as the appraiser. Moreover, this witness had the opportunity to be prepared to testify at this hearing since both she and trial counsel for respondent had been given notice that the assessor would be called as a witness at the hearing by petitioner. Since both the assessor and respondent were notified, the assessor should have been prepared to testify at the hearing. Moreover, throughout her testimony, the assessor was provided the opportunity to review documents to refresh her recollection. Finally, trial counsel for respondent never objected to the assessor's testimony on the grounds of lack of

preparation.

### **Testimony of Steven M. Larrabee will not be stricken**

Petitioner argues that Mr. Larrabee's testimony should be stricken because he testified that he is biased and, therefore, has become an advocate for respondent rather than an expert witness.

Bias goes to the credibility, not admissibility, of testimony. The weight and credibility to be given to the opinions of expert witnesses is uniquely within the province of the fact finder. *Schorer v. Schorer*, 177 Wis. 2d 387, 396, 501 N.W.2d 916 (Ct. App. 1993).

Mr. Larrabee is a certified assessor for the State of Wisconsin. His admitted bias is not impermissible. He said that he was biased because he wanted the assessment that he had completed with the other assessor to be upheld. In other words, he wanted the Commission to find that his assessment/appraisal was correct.

While Mr. Larrabee's stated bias shows his partiality on behalf of respondent's assessment, this bias does not rise to the level of advocacy for respondent. Advocating for one's own expert opinion does not make him "a mere advocate" for respondent, and his testimony will not be stricken. *See Estate of Halas, Sr. v. Commissioner*, 94 T.C. 570 (1990).

### **Presumption of Correctness of Respondent's Assessment**

Respondent's assessment is presumed to be correct, and it is the taxpayer's burden to demonstrate that the assessment is incorrect. *See Hormel Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-741 at 32,962 (WTAC 2004), *aff'd*, Case No. 04-CV-1278 (Dane Co. Cir. Ct. 2004). If there is credible evidence that may in

any reasonable view support the assessor's valuation, that valuation must be upheld. *Universal Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-316 at 31,111 (WTAC 1997). However, it is error to disregard uncontradicted competent evidence which shows the assessor's valuation is incorrect. *Universal* at 31,111-112.

If the presumption of correctness is rebutted, the effect is that the presumption disappears. It does not affect the overall burden of persuasion. As a general matter, this burden remains with petitioner. *Universal* at 31,112. To meet this burden, the alternative valuation urged by petitioner must be supported by credible, direct, and unambiguous evidence. *Royal Terrace Partnership v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-244 at 30,812 (WTAC 1996), *aff'd* in *City of Two Rivers v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-345 (Dane Co. Cir. Ct. 1997).

Although respondent's assessment used three approaches to value the subject property (cost, income, and comparable sales), respondent's assessment relies ultimately upon the comparable sales approach to reach the assessed value of \$7,874,100 or \$49.34 per square foot. The assessment contains three comparable sales. The first is the sale of the Rayovac office building in Madison. The second is the sale-leaseback transaction of the subject property from May 1, 1996. The third is the business sale of the 3-M manufacturing plant near the subject property.

Respondent's appraisal no longer carries the presumption of correctness because none of respondent's comparable sales can be relied upon to value the subject property. The first comparable sale was a building with an entirely different use and was found to be unreliable by respondent's own assessors. The second comparable sale is the sale-leaseback transaction of the subject property that was not based upon fair

market value. The third comparable sale has a disputed value for the sale price that was not proven by reliable evidence.

### **Comparable Sale with Different Use**

Respondent's first comparable sale is not a comparable sale. It is the sale of an office building in Madison and is not a manufacturing facility of any kind. The only reason this sale was included by respondent's assessors was that it was once involved in a sale-leaseback transaction. Both the assessor and Mr. Larrabee testified that this was not a reliable comparable sale. It was only offered to show that a sale-leaseback transaction can be a sale for fair market value as shown by a subsequent sale of this property.

### **Sale-Leaseback Transaction**

The second comparable sale relied upon by respondent's assessors is the sale-leaseback transaction of the subject property that took place on May 1, 1996. Respondent's assessment relied upon this sale, arguing that this was a "fair market value" sale.

Real property assessment in Wisconsin is governed by Wis. Stat. § 70.32(1). Under this statute, assessment is to be made at "full value which could ordinarily be obtained at private sale." "Full value," "market value", and "fair market value" are interchangeable and synonymous terms for purposes of assessing real property. *Flood v. Lomira Board of Review*, 153 Wis.2d 428, 435 (1990). For the recent sale price of the subject property to be the best indication of full value, "the sale must be made 'under normal conditions' so as to lead to the conclusion that the price paid was that which could 'ordinarily' be obtained for that property." *Id.*, at 437.

Wisconsin Statutes § 70.32(1) further states that the Property Assessment Manual for Wisconsin Assessors shall govern the manner of assessment, with the instruction that the assessor shall consider recent arm's-length sales of the property in question if those sales conform to recent arm's-length sales of reasonably comparable property. The Manual, in turn, lays out the following five conditions or standards necessary for a sale to be considered an arm's-length or fair market value transaction:

1. It must have been exposed to the open market for a period of time typical of the turnover time for the type of property involved.
2. It presumes that both the buyer and the seller are knowledgeable about the real estate market.
3. It presumes the buyer and seller are knowledgeable about the uses, present and potential, of the property.
4. It requires a willing buyer and a willing seller, with neither party compelled to act.
5. Payment of the property is in cash, or typical of normal financing and payment arrangements prevalent in the market for the type of property involved.

Property Assessment Manual for Wisconsin Assessors, Vol. 1, p. 7-4 (Rev. 12/04).

The Commission has found previously in *Royal Terrace* that if there was a deviation from the standards or conditions required to find that a sale was made at fair market value found in the Manual as stated above, the sale was not made "under normal conditions." Therefore, it could not be found that the sale price was for fair market value. *Royal Terrace* at 30,812. In applying the first and fifth standards to the present sale-leaseback transaction, we find that there were deviations from the standards that would prevent a finding of an arm's-length sale at fair market value.

The first standard has not been met in this case. The property was not exposed to the open market for a period of time typical of the turnover time for this type of property. In fact, there is insufficient evidence to show that the subject property was ever exposed to the real estate market prior to the execution of the sale-leaseback transaction.

This property was exposed to an investment community who, as bidders, knew that the "sale" was conditioned upon the simultaneous leaseback of the property. The company was cash poor and needed financing for the expansion. HTI decided to finance the company's expansion into Eau Claire by the use of the sale-leaseback because of the advantages of getting more cash than from a traditional mortgage and by increasing the debt-equity ratio on their balance sheet, since this transaction would be reflected as an operating lease expense and not a long-term debt.

The evidence of market exposure consisted of Mr. Larrabee's hearsay statements regarding his conversations with a principal at "[T]old Meridian." Mr. Larrabee testified that he obtained this information by speaking with the unnamed principal at "[T]old Meridian" who "believed" that the property was marketed through a broker in Chicago. Mr. Larrabee also testified that the information received about the Chicago broker may have been in error. Mr. Larrabee also made a vague statement about it "appearing" that there was marketing activity for three months. However, that conclusion also appears to be based on the statements from the principal of "[T]old Meridian." This hearsay evidence cannot be relied upon, since there is no corroboration and it is disputed by the direct testimony of HTI's treasurer. *See Gehin v. Wisconsin Group Insurance Board*, 278 Wis. 2d 111, 16, 692 N.W. 2d 572 (holding that

uncorroborated hearsay evidence alone does not constitute substantial evidence to support factual findings and decision in administrative agency proceedings.)

HTI selected an investor for the transaction who, in turn, formed Meridian Eau Claire LLC specifically to be the purchaser and lessor of the subject property.

Title to the property was conveyed to petitioner (buyer/lessor, Meridian Eau Claire LLC), but the entire nature of the transaction indicates that the underlying fair market value of the property – whether standing alone or in comparison to similar property – had little or nothing to do with the setting of the sale price under the agreement. The sale price and lease payments were negotiated at the same time, and the sale and lease transactions occurred at the same time. The sale price and simultaneous lease payments were determined from the cost of the new building as allowed under FASB rules so that the lease would qualify as an operating lease. No attempt was made to appraise the subject property for fair market value. The sale price component – rents to be received under the leaseback agreement – was a function of the rate of return the buyer/lessor wished for its invested money, and had nothing whatsoever to do with the underlying fair market value of the subject property.

The fifth assessment standard to determine an arm's-length sale has also not been met. The purpose of condition 5 is to ensure that special financing arrangements which provide a pronounced benefit to one party of a transaction, thereby distorting the sales price away from market value, will be considered in an assessment. *See Flood*, 155 Wis. 2d at 439. While there was financing through a third party, there were additional special financing arrangements for petitioner with the sale-leaseback transaction. In this transaction, petitioner was guaranteed repayment of the

sale price of the property through the simultaneous long-term lease even though petitioner was the purchaser of the property. This guarantee artificially increased the sale price over what might have been obtained in a market transaction with normal financing and payment arrangements. The purpose of setting the price of the sale and basis for the lease at the cost of the new building was to qualify the lease as an operating lease and had nothing to do with the fair market value of the subject property. Because this financing of the sale by the use of a simultaneous lease is not typical of a normal real estate transaction and served to distort the sale price from what might have been obtainable at an arm's-length sale, petitioner has met its burden of proof to show that neither condition 1 nor condition 5 was met.

The subject property's sale-leaseback transaction did deviate from the standards required to find that the property sale was made "under normal conditions" at fair market value. Therefore, the price paid for the sale-leaseback transaction was not the fair market value price that could "ordinarily" be obtained for that property. *Royal Terrace* at 30,812.

#### **Unsubstantiated Evidence of Comparable Sale Price**

Respondent's assessment/appraisal gives most weight to its Comparable Sale 3, the sale of a high-tech business near the subject property sold close to the time of the appraisal. Unfortunately, the sale price of \$23,600,000 as reported to the State of Wisconsin for this property included personal property and intangibles. The owner reported to Mr. Larrabee that the actual sale price for land and improvements was \$5,798,800 (Exhibit 8). (Petitioner offers this same comparable sale as its Comparable Sale I-1 at the owner's stated price of \$5,798,000.)

Instead of relying upon this information as evidence of the actual sale price, Mr. Larrabee applied a different sale value of \$7,953,700. He testified that he obtained this number from an appraisal completed for the company; but that appraisal was never entered into evidence in this matter, and there is no evidence to show how this number was determined.

Comparable Sale 3 can be relied upon only to the extent that it supports a valuation of around \$5,798,000. The only evidence showing the sale price of the land and improvements is the letter from the owner showing the sale value of \$5,798,800. Mr. Larrabee's unsubstantiated statements indicating a higher sale price found in different appraisal not entered into evidence are insufficient to overcome the lower sale price for the same property entered into evidence and documented in Exhibit 8.

#### **Petitioner's Appraisal was persuasive**

As stated earlier, if the presumption of correctness is rebutted, the effect is that the presumption disappears. It does not affect the overall burden of persuasion. The burden is still upon the petitioner to show that its appraisal is the correct value of the subject property. *Universal* at 31,112.

The Findings of Fact show that petitioner has met that burden and shown that its appraisal value of \$5,500,000 is correct. When valued at \$5,798,000, respondent's own Comparable Sale 3 matches petitioner's Comparable Sale I-1 and corroborates petitioner's appraisal. Petitioner's appraisal was completed by an expert independent appraiser who provided persuasive, direct, and unambiguous evidence in support of the alternative valuation urged by petitioner.

Therefore,

**IT IS ORDERED**

That the determination of the State Board of Assessors with respect to the January 1, 2001 assessed value of petitioner's property is hereby reversed, and the assessment is reduced to \$5,500,000.

Dated at Madison, Wisconsin, this 1st day of September, 2005.

**WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

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David C. Swanson, Commissioner

**ATTACHMENT: "NOTICE OF APPEAL INFORMATION"**