

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 08

DEBRA A. WOLF INVESTMENT
TRUST,

Plaintiff,

-vs-

Case No. 15CV006122

CITY OF WAUWATOSA,

Defendant.

ORAL RULING

SEPTEMBER 20, 2017
MILWAUKEE, WISCONSIN
COURTHOUSE-ROOM 414

BEFORE:

THE HONORABLE WILLIAM SOSNAY
CIRCUIT JUDGE

APPEARANCES:

SARA RAPKIN and SHAWN LOVELL, Attorneys-at-Law,
Appeared on behalf of the Plaintiff.

AMY SEIBEL, Attorney-at-law,
Appeared on behalf of and with the Defendant.

RYAN BRAITHWAITE, Attorney-at-law,
Appeared via telephone on behalf of the Defendant.

Lori J. Cunico
Official Court Reporter

1 TRANSCRIPT OF PROCEEDINGS:

2 THE CLERK: Calling 15CV6122, Debra
3 A. Wolf Investment Trust vs. City of Wauwatosa.
4 Appearances please.

5 ATTORNEY RAPKIN: Debra A. Wolf
6 Investment Trust appears by the law firm of
7 Reinhart Boerner Van Dueren by Attorneys Shawn
8 Lovell and Sara Rapkin. Good morning, Your Honor.

9 THE COURT: Good morning.

10 ATTORNEY SEIBEL: City of Wauwatosa
11 appears in person by Amy Seibel, and Ryan
12 Braithwaite is appearing by phone.

13 THE COURT: All right. Good
14 morning.

15 First of all, I want to thank counsel
16 for rearranging their schedule. The court
17 appreciates also the fact that both sides timely
18 submitted their post trial memorandums along with
19 findings. The court has had the opportunity to
20 review the record, go over my notes, the exhibits,
21 review the testimony, and obviously I read your
22 submissions, as well as a review of the record
23 heretofore. This was a trial that was conducted in
24 this court on August 21st for four days. A number
25 of witnesses testified, the court has considered

1 this matter very carefully and is prepared to
2 render a decision today.

3 The court notes, obviously, that
4 there is a number of different statutes, manuals,
5 and references concerning the concept of assessment
6 and certainly a wealth of Wisconsin cases on this.
7 I've looked at those cases in the context of the
8 evidence here, and the court wants to thank counsel
9 for both sides for their diligence in referencing
10 those case, albeit their different interpretations
11 of them, as well as the statutes and law in
12 Wisconsin.

13 This is always the case when
14 ultimately the issues in dispute need to be
15 litigated. Both sides proceeded in good faith. I
16 thought their cases were well presented. They were
17 prepared and organized. And while this was a four-
18 day trial, they covered the necessary material as
19 expeditiously as possible. That has helped the
20 court in my decision. This is not an easy matter
21 for any court, because it involves an area of the
22 law that is somewhat specific and unique. It's
23 almost a cottage industry, I guess, if you were to
24 characterize it, in terms of issues and one that a
25 court doesn't normally deal with on a regular

1 basis, at least when it gets down to the bottom
2 line in terms of its final analysis.

3 Now, there are many decisions, as I
4 said, that reflect the law in Wisconsin as it
5 pertains to assessments. There is a recent case --
6 and when I say recent, within the last five or six
7 years -- that was referenced, and the court by no
8 means beginning with mentioning this, necessarily
9 means that this is controlling, but nevertheless
10 Great Lakes Quick Lube vs. The City of Milwaukee at
11 331 Wis. 2d 137, points out a number of things that
12 I think the court can begin with.

13 It does point out -- and I mention
14 this at the outset because there has been
15 conflicting testimony from both sides with regard
16 to the testimony of their respective experts -- at
17 page 147, the court in its decision states under
18 paragraph 15 as follows. Where there is
19 conflicting testimony, the fact finder -- in this
20 instance the court -- is the ultimate arbiter of
21 credibility. The weight and credibility to be
22 given to the opinions of expert witnesses is
23 uniquely within the province of the fact finder.
24 That's a quote within that case.

25 I wanted to begin by referencing that

1 because the court obviously in deciding this case
2 had to weigh the credibility and evaluate the
3 testimony of the experts here.

4 They also went on to point out that
5 they took into account the three-tier hierarchy
6 that is described in the assessment manual that's
7 to be applied to determine fair market value of
8 property for tax assessment. They reference
9 Wisconsin Statute 70.32(1) and 74.37, which allows
10 for the court's de novo review. So I wanted to
11 begin at the outset by putting this all in context.

12 Now that having been said, the court,
13 as indicated, heard testimony over a period of four
14 days. That testimony included the testimony of
15 Robert Trapp, who was the expert for the plaintiff,
16 Mr. Nicholson, who is the expert retained by the
17 City, Mr. Hamilton, and then the assessor for the
18 City of Wauwatosa. Their testimony was extensive
19 and it also included the use and reference to many
20 exhibits, which are reflected in the record that
21 were received in evidence.

22 The matter before the court involves
23 the valuation of the property in Wauwatosa and
24 property tax assessment of the Firestone Complete
25 Auto Care Center, which is located in Wauwatosa at

1 Burleigh and 124th Street, which is also in
2 Milwaukee County. That property is leased and was
3 leased by Firestone since the building's
4 construction in 2011.

5 The property was subsequently
6 purchased by the current plaintiff, the Debra Wolf
7 Investment Trust, in November of 2012. The sale
8 price, which is significant here, was \$3,120,000,
9 which the court notes from the testimony comes to
10 \$412 a square foot. It's noteworthy to point out
11 that Firestone has a 15-year lease on this property
12 which continues until 2026. The plaintiff is the
13 current owner of this property and Firestone
14 obviously is the tenant.

15 It is undisputed from the record that
16 the property is functional for purposes for which
17 it is constructed. And the evidence reflects that
18 this property has been used as a single occupant
19 freestanding automotive facility since its
20 construction. The facility itself consists of
21 7,574 square feet on I believe roughly two acres of
22 land. The inner facility is set up for obviously
23 the type of business Firestone conducts, and this
24 particular property has ten bays, which is somewhat
25 significant in the context of comparing it to the

1 other properties referenced in the evidence. And
2 with those ten bays obviously has ten doors.

3 As to the lease, the court finds from
4 the evidence, that this is a net net net lease to
5 Firestone, with a four-year renewal option that
6 Firestone may accept and extend if they choose to
7 do so. As in the case of a triple net lease,
8 Firestone pays all the operating expenses
9 associated with the real estate, which includes the
10 property taxes, repairs and maintenance, utilities
11 and property insurance, hence the benefit of the
12 triple net lease. This also is significant in the
13 context that it's conducive to an investor wanting
14 a property like this.

15 The current assessment is based
16 essentially on the sale price of the property,
17 which is \$3,120,000. The plaintiff has asserted
18 that the sale price to be used for that purpose is
19 not valid, and they maintain the property should be
20 assessed at or about \$1,700,000. It's noted also
21 that the issues before the court deal with the 2014
22 tax assessment, to which the plaintiff has claimed
23 that they have been overassessed or overpaid. It
24 should also be noted that the property was
25 purchased in fee simple.

1 The court further finds that in 2013,
2 from the evidence presented, including the
3 testimony of the assessor, that the City of
4 Wauwatosa was doing a full reevaluation of all of
5 the properties within their city. At that time the
6 assessor valued the subject property and set the
7 assessment at its current fair market value, which
8 is the 2012 sale price. This sale was a market
9 transaction that reflected the fair market value or
10 full value of the property. That is the clear
11 position of the defendants here, the City.

12 Now, Mr. Trapp did an evaluation on
13 behalf of the plaintiff. It should be noted, but
14 without great significance but it is in the record,
15 that he was originally retained by Firestone and
16 represented them at the Board of review. As
17 indicated, this is a 74.37 de novo review in effect
18 of that.

19 Now, the court notes that there are a
20 number of references that this court had to rely on
21 and resort to in coming to its decision, as well as
22 in evaluating the evidence and applying the law to
23 that as it's been presented in the record. To that
24 extent that includes but is not limited to the
25 statutes previously referenced, as well as what's

1 been referred to as the Markarian,
2 M-A-R-K-A-R-I-A-N, hierarchy of assessment
3 methodology, which to some extent comes from
4 70.32(1).

5 The court has also referred to the
6 Wisconsin Property Assessment Manual and those
7 sections that have been referenced in the trial by
8 both sides. The property assessment manual set
9 forth this three-tier assessment methodology. This
10 originates from the case of State ex rel Markarian
11 vs. the City of Cudahy, which was decided and
12 referenced in 45 Wis. 2d 683, specifically, I
13 believe, at page 686.

14 Essentially evidence of an arm's
15 length sale of the property is often the best
16 evidence of market value. It provides that if
17 there has been no recent sale of the subject
18 property, an assessor must then consider sales of
19 reasonably comparable properties. Only if there
20 has been no arm's length sale and there are no
21 reasonably comparable sales, may an assessor use a
22 third-tier assessment under this methodology. The
23 authority from that is the Markarian case.

24 It even provides that it may be error
25 for the assessor to look at other information to

1 value the property if that exists. That was an
2 issue in the Quick Lube case which I referenced at
3 the outset of that. And quoting from that case, an
4 arm's length sale price is the best indicator to
5 determine fair market value for property tax
6 purposes and an approach that considers factors
7 extrinsic to the arm's length sale is not
8 statutorily correct and therefore is an error as a
9 matter of law.

10 This essentially is the position of
11 the City. They contend and have submitted evidence
12 that this sale in 2012 is an arm's length
13 transaction, that pursuant to Wisconsin Statute
14 Section 70.32(1,) and the Markarian hierarchy must
15 be used to determine the assessment. They maintain
16 that any other method would be contrary to law and
17 therefore invalid. They also have maintained that
18 the appraisal completed by Mr. Trapp on behalf of
19 the plaintiff is invalid because it rejects the
20 2012 sale of the subject property as evidence of
21 market value.

22 The record shows that the plaintiff's
23 expert has taken the position that the sale was not
24 at an arm's length transaction and therefore
25 utilized and evaluated tier-two and tier-three

1 under the cost method.

2 The court, in evaluating this
3 evidence continues, based upon the record, to find
4 the following. As indicated, Firestone had filed
5 an objection before the Board of Review. Mr. Trapp
6 was retained obviously to represent them and
7 present their case to the Board. Here the court
8 further finds that the Wauwatosa assessor had
9 signed an affidavit which was attached to the 2014
10 property tax roll that affirmed that the properties
11 in Wauwatosa were assessed at market values based
12 on professionally accepted appraisal practices.
13 I'll get into her basis and analysis later.

14 The assessor's affidavit, and the
15 court mentions this in my findings at this point,
16 towards the beginning, as it serves as the basis
17 for the statutory presumption of correctness, as
18 set forth in case law, as well as Wisconsin Stats.
19 Section 70.49(2). To this, as indicated, Firestone
20 timely filed an objection. A hearing was held and
21 the Board sustained the assessment, and
22 subsequently this lawsuit was filed by the
23 plaintiff trust as the owner of the property.

24 This court's review, as indicated, is
25 a de novo review of what transpired based upon the

1 evidence in the record. A de novo review does not
2 have to be defined. It's been defined and the
3 court has approached this case with that in mind,
4 as directed by the case law.

5 Now, while the plaintiff has retained
6 the expert, Mr. Trapp, the City has relied on and
7 retained Mr. Larry Nicholson. They referred to him
8 as an independent appraiser, but the court
9 obviously does not refer to him as an independent
10 appraiser, he's their appraiser. It's kind of like
11 the situations in personal injury cases where
12 defense firms or insurance companies say they had
13 an IME, an independent medical exam, by an
14 independent medical examiner, albeit they hired him
15 and they paid for him. So the court points that
16 out because I want to emphasize in context the
17 court is viewing these appraisers as being
18 similarly situated. While the defense arguably
19 maintains that Mr. Trapp is somewhat biased,
20 arguably I'm sure the plaintiffs feel mutually
21 concerning Mr. Nicholson.

22 Now with that in mind I considered
23 their credentials, their experience, their method
24 and their analysis. And court would reflect and
25 emphasize, not only for the benefit of the parties,

1 but obviously for the record, and I'm now speaking
2 to any appellate court that would review this, that
3 I carefully analyzed how they went about performing
4 the assessment. As obviously the property manual
5 sets forth methods, the Markarian case and the
6 statute also gives guidance to that. So it was
7 within that context and the overall record that
8 this court evaluated their testimony.

9 From the testimony of Mr. Nicholson,
10 the court finds that he did complete evaluation
11 analysis and concluded that the 2012 sale of this
12 property was reflective of market value. He
13 appraised the property on a fee simple basis and he
14 based that and the value was not lease fee as
15 plaintiff contends. He found that the rents
16 payable under the lease to be in market and the
17 lease fee and fee simple values were the same.

18 Since he found the rents payable
19 under the lease to be at market, he concluded that
20 the lease fee and the fee simple values were the
21 same. He also concluded that the contract rents
22 were at market and determinative in the market
23 value of the fee simple estate.

24 Now, to that extent the court looked
25 at, as the parties had argued very extensively,

1 their respective interpretations of the decision in
2 Walgreens vs. The City of Madison. The
3 circumstances there were a little different however
4 than what occurred here. I mention that as an
5 aside, but also it's noteworthy to point that out.

6 Mr. Trapp prepared an appraisal
7 report as well. Both Mr. Trapp and Mr. Nicholson
8 found that the highest and best use of the property
9 is for it to continue as an auto service center.
10 It's ideally situated for that for the reasons and
11 the evidence set forth in the record. They also
12 concluded that the most likely buyer of this
13 property would be an investor that would purchase
14 the property for its income producing capability.
15 And the previous owner obviously held it for that
16 purpose as well, only to sell it obviously for
17 various reasons, including, but certainly a
18 profit. And the previous owner was a very
19 experienced real estate firm that has done a good
20 deal of business in southeastern Wisconsin.

21 Now, both Mr. Nicholson and Mr. Trapp
22 also used build to suit properties as comparables
23 to the subject property to determine market rent
24 and comparable sales.

25 The court does find based upon the

1 evidence and the credible testimony, that this sale
2 in 2012 of this property was an arm's length
3 transaction which did reflect the fair market value
4 of the property. The court in determining that
5 notes that this property was an arm's length sale as
6 I find it met the five conditions set forth in the
7 manual necessary to qualify as an arm's length
8 sale. There was a good deal of this by the
9 witnesses both on direct and cross examination.

10 Briefly, in analyzing this, I find
11 that the buyer here and the seller were typically
12 motivated. The plaintiff, as buyer from
13 Continental Properties, who was the seller, were
14 typically motivated in the sale. There was
15 testimony that this was a Section 1031 transaction
16 tax exchange under IRS, but I find that it was not
17 a factor based on the evidence that took the sale
18 outside of a typically motivated sale. I think and
19 I find the evidence overwhelming in that regard.
20 These types of transactions are often commonplace
21 and the court finds no varying from the standard
22 merely because that may have been a purpose or a
23 determination in the sale.

24 I also find that both parties here
25 were well informed or well advised and acting in

1 what they considered in their own best interests.
2 As indicated, Continental was a very experienced
3 dealer in real estate. Here the buyer, the
4 plaintiff, was represented by a broker. I also
5 find that a reasonable time was allowed for
6 exposure in the open market. I find that the
7 testimony is supported in the record, the property
8 was listed for sale and on the market for over a
9 hundred days, I believe specifically 101 days, and
10 that evidence is unrefuted.

11 I further find that payment was made
12 in terms of cash, and that they were standard
13 financial arrangements that were utilized. And
14 finally, I find that the price here represented
15 normal consideration from this property, that was
16 sold and was unaffected by any special or creative
17 financing or sales concessions associated with the
18 sale. Here there was a mortgage, and the court
19 sees nothing out of the ordinary or unique, and I
20 so find.

21 I also find based upon the evidence
22 and the credible evidence of the expert,
23 Mr. Nicholson, that the sale price conformed to
24 recent sale prices of other reasonable comparable
25 properties. The evidence shows, and I so find,

1 that he utilized four comparable sales. Of those
2 that included two Firestone properties, one in New
3 Berlin and another located in West Milwaukee, which
4 was in Milwaukee County, and a Tires Plus store
5 located in Germantown and one in Waukesha. Now
6 those were also utilized by Mr. Trapp.

7 The testimony reflected that
8 Mr. Nicholson, it should be noted, did not use the
9 Germantown site because he felt that the property
10 was too old. I believe it was at least ten years
11 older than the subject property.

12 The sales otherwise compared by both
13 Mr. Nicholson and the assessor from the City were
14 similar comparing age, condition, use, type of
15 construction, location, design, and other
16 characteristics. The court mentions that because I
17 think it is noteworthy and significant that
18 obviously the more similar the sold property is to
19 the subject and to the comparables, the more
20 arguably reliable it is as an indicator of value of
21 the property. As indicated, the City and
22 Mr. Nicholson focused primarily on tier-one sale of
23 the property, utilizing then the next step to
24 compare it to other sales of similar property.

25 The court further finds that the

1 reasonably comparable property sales that was used
2 by the assessor for the City demonstrated that the
3 sale price of this property did conform to recent
4 sales of other reasonably comparable properties. I
5 think and I find that the evidence on that is
6 overwhelming based upon the exhibits in the record.

7 Mr. Nicholson did use this tier-one
8 approach. He did make some adjustments based upon
9 his experience, as Mr. Trapp did as well, and the
10 court finds no fault with that, as I find that both
11 were experienced individuals in their field.

12 Mr. Nicholson compared properties within a period
13 of three years, and the court finds that that
14 certainly did not skew the analysis here and in
15 effect was more of a rule of thumb utilized by
16 assessors than the two-year period that Mr. Trapp
17 utilized.

18 I found Mr. Trapp's analysis and
19 determination to use that two-year period as
20 somewhat arbitrary. Clearly the court notes that
21 in comparison, the court finds that the properties
22 used by the assessor and Mr. Nicholson were more
23 suited to compare than those of Mr. Trapp. All of
24 the sales used by Mr. Nicholson had newer leases
25 from the evidence and they were based on market

1 terms.

2 The court finds that three of the
3 property sales used by Mr. Trapp were not
4 reasonably comparable sales to this property. The
5 court notes that included the store in West Bend
6 and Beloit.

7 The court notes also that Mr. Trapp
8 selected what he considered comparable sales that
9 were outside of the greater Milwaukee area. The
10 record reflects at the outset of his testimony the
11 court interjected and made an inquiry, I guess as a
12 lay person might, and asked whether or not he
13 sought out and looked for Firestone properties in
14 the Milwaukee area. His response is reflected in
15 his testimony in the record. The court finds that
16 these Beloit and West Bend properties were not
17 ideal and they were inferior in terms of
18 comparables.

19 He did, in his analysis, that is
20 Mr. Trapp, adjust sales prices. I find his
21 analysis and approach in that regard as unreliable,
22 and hence I don't find it to be credible. The
23 court is troubled by this concept of adjustments as
24 it's used within this industry. And this is not to
25 say that Mr. Nicholson did not do that as well.

1 However, in the application I find Mr. Trapp's
2 adjustments based upon his rationale and analysis
3 and the evidence to be unreliable.

4 He chose properties that had lower
5 sales prices and that was due in part to locations
6 that the court finds were inferior, along with the
7 age of the properties, to the subject property at
8 hand. Three of his properties were ten years older
9 than the property in question. One could argue
10 that those properties were selected because they
11 were sold for lesser prices, and that could be
12 responsible or in part due to the age of the
13 building and the location.

14 I also find that Mr. Trapp's analysis
15 and the method that he followed resulted in an
16 unreliable opinion. And I find his overall opinion
17 to be not credible or reliable, based upon his
18 analysis and use of comparables and his reference
19 and utilization of the tier-three approach.

20 I further find, to support the
21 analysis of Mr. Nicholson and subsequently the City
22 assessor, that the New Berlin and West Milwaukee
23 Firestone properties were very similar for a number
24 of reasons, including but not limited to the
25 traffic count and visibility and access to the

1 property. That is contrary to what the evidence
2 showed regarding the Waukesha and Germantown Tire
3 Plus stores.

4 I further find that not only from
5 Mr. Nicholson's analysis but the City assessor's
6 analysis and their report, that a market rent
7 analysis does demonstrate that Firestone was paying
8 market rent to the property, and it was not over
9 value or over contract.

10 I further find that because the
11 Firestone properties rents were at market rents,
12 the existence of this lease did not elevate the
13 sale price of the subject property above market
14 value. Now, counsel for the plaintiffs might argue
15 with that, and they obviously disagree and take a
16 contrary position, and they have relied on the
17 Walgreens vs. City of Madison. However, again,
18 that case is distinguishable in that regard, and it
19 can't be compared based upon this court's finding.
20 As indicated, I don't find that there was any
21 creative financing that resulted in an elevated
22 sale price here.

23 I further find that the comparable
24 rents in this regard utilized by Mr. Trapp were not
25 properly adjusted in comparison to the subject

1 property that would allow him to reach a reliable
2 or credible conclusion concerning the market
3 rents. And therefore, I find his comparable rent
4 analysis in this case to have been flawed.

5 A significant aspect of Mr. Trapp's
6 conclusion that the contract rents were above
7 market was premised on his opinion that the West
8 Bend property was superior to the property at
9 hand. The court rejects that finding, and I find
10 that the evidence in the record overwhelmingly
11 demonstrated by the testimony and the exhibits that
12 that property was inferior to the subject property
13 for a number of reasons, including but not limited
14 to its location and size.

15 I further find that Mr. Trapp's
16 rejection of the sale price of the subject property
17 was in error because his conclusion that the
18 subject rent was above market was incorrect, and
19 the court finds was without adequate support and
20 evidence in the record from the evidence and the
21 reliable data that was utilized by Mr. Nicholson.
22 In that regard, again I find Mr. Nicholson's
23 testimony to credible, and accordingly, the court
24 has relied on his opinion concerning the
25 assessment.

1 I further find that the testimony and
2 opinions of Doctor Hamilton to be credible and the
3 court accepts and adopts his conclusions as well,
4 and that includes his analysis of Mr. Nicholson's
5 assessment, and his reference to an opinion
6 concerning the appraisal by Mr. Trapp.

7 I also find, based upon the law in
8 Wisconsin, particularly from the case of Clear
9 Channel Outdoor, Inc. vs. The City of Milwaukee at
10 374 Wis. 2d 348, that assessments are entitled to a
11 presumption of correctness. Reference also to
12 Wisconsin Statute 70.49(2). The court finds and
13 concludes based upon the law from those cases and
14 that statute, as well as other cases, that an
15 assessor's evaluation stands as prima facie
16 correct, as the assessment needs no support by
17 evidence, but must stand unless shown to be
18 incorrect by reasonably direct and unambiguous
19 evidence. The court also cites the case of Sausen,
20 S-A-U-S-E-N, vs. the Town of Black Creek.

21 The plaintiff here has the burden to
22 show that the assessment is excessive, and to do
23 that they must present significant contrary
24 evidence. They have the burden to present evidence
25 to overcome this, that it's not fair. It must

1 compel the conclusion that the assessor valuation
2 was incorrect. The court cites Xerox Corporation
3 vs. the Wisconsin Department of Revenue at 114 Wis.
4 2d at page 528.

5 From the Clear Channel case the court
6 notes the language in the opinion that the
7 assessment must be upheld if in any reasonable
8 review of the evidence in its entirety the amount
9 of the assessment is valid. Critique of the
10 assessor's evaluation alone does not overcome the
11 presumption of correctness. The court notes that
12 because in effect that occurred here, and the court
13 finds that merely the critique by Mr. Trapp does
14 not render the City assessor's assessment
15 incorrect.

16 I also find that Mr. Trapp has failed
17 to follow the statutory hierarchy under the
18 Markarian theory and recognize that the sale of
19 this property is a tier-one market sale. I find
20 his analysis of that flawed and incorrect and
21 therefore unreliable.

22 Also pursuant to Wisconsin Statute
23 74.37, the taxpayer is required not only to
24 overcome the presumption of correctness, but is
25 also required to satisfy their burden of proof on

1 all of the elements of their claims. I find from
2 the evidence in the record that the plaintiffs have
3 failed to do so. They have not met their burden
4 here.

5 I do find, in looking again at the
6 Markarian method, that there were recent arm's
7 length sales that were comparables, and those
8 utilized by the defendant City were more
9 appropriate. The court again relies on the
10 analysis as set forth in the manual, the statute,
11 as well as the Markarian case.

12 The court finds further that based
13 upon these factual findings as set forth and
14 supported in the record by the evidence, that the
15 2012 sale of the subject property was an arm's
16 length sale, and that the Firestone rent that is
17 paid at the sale, at the time of the sale, was at
18 market rates, based upon the evidence. And I adopt
19 the analysis from the testimony of Mr. Nicholson.

20 The sale of this property conformed
21 to the sales of the reasonably comparable
22 properties based upon acceptable appraisal
23 practices. The sale prices of the properties in
24 New Berlin and West Milwaukee, which were used as
25 comparables, and were Firestone properties, as

1 adjusted to the subject property, were very close
2 and approximate to the sale of the price of the
3 subject property.

4 On the contrary, I find that the
5 utilization by Mr. Trapp, as I have found
6 previously, that the Waukesha and Germantown
7 properties were not in his analysis. I find that
8 Mr. Nicholson did use the proper analysis and the
9 approach utilizing the Markarian hierarchy, as did
10 the City assessor.

11 I also conclude, based upon the
12 evidence and consistent with the case law, that
13 when the contract rent of a leased property is sold
14 it is at market levels, the value of the lease fee
15 interest then is the same as the value of a fee
16 simple interest, which we have here. In those
17 cases, based upon my analysis of the Walgreens
18 case, the contract rents do determine the fair
19 market value of the fee simple estate. Now, I
20 mention that because there was a difference of
21 opinion in the interpretation of the Walgreen
22 decision by both sides.

23 Therefore, this court concludes that
24 the contract rent contained in this lease was at
25 market level at the time of the sale, and the sale

1 price of this property does reflect the fair market
2 value of the fee simple estate. I believe the
3 testimony and so find by Mr. Nicholson, supports
4 this, I find it to be credible in the context of
5 this transaction and the evidence in the record.
6 To that extent I conclude that Mr. Trapp's opinion
7 was not credible and is not supported by the data
8 that he utilized.

9 I have so found that the sale of the
10 property was an arm's length sale, and I do
11 conclude that it did meet all of the five
12 conditions set forth in the manual, therefore,
13 allowing for the approach that was utilized by
14 Mr. Nicholson and the City assessor.

15 The court finds based therefore on
16 the evidence in the record, my findings as stated,
17 and my conclusions, that I now conclude and do
18 affirm the assessment made by the City and I render
19 judgment in favor of the City accordingly, and find
20 obviously that the plaintiffs have not sustained
21 their burden here. So ordered.

22 Miss Seibel, you may prepare, if you
23 wish, an order consistent with the court's findings
24 and conclusion and submit it under the five-day
25 rule.

1 Now, finally, I want to stress to
2 both counsel that the court understands the
3 significance of this, and the sensitivity of it to
4 their respective clients. The court evaluated this
5 very carefully. This is not exact science, there
6 is a requirement obviously, for many reasons, as to
7 why this exists. It is a necessary that allows
8 for, obviously, a way to evaluate and assess
9 property. The Legislature has dictated in the
10 statutes applicable how that's to be done. The
11 court, as I have done here, can only serve to
12 analyze that in the context of what the statute
13 says and how I interpret those statutes, as well as
14 the case law that guides the court from the many
15 previous decisions that have been reported
16 concerning issues very similar to this case.

17 I respect the positions of both sides
18 regarding how they interpreted that case law, those
19 statutes and the application of the manual.
20 However, in my analysis and my careful review of
21 the record, I found that the City's case was far
22 more compelling based upon this particular
23 transaction and the methods utilized by the
24 experts. And I find that the City's testimony and
25 evidence was far more reliable and credible, hence

1 the court's conclusion.

2 I conclude with this because I
3 pointed out at the beginning the reference in the
4 Great Lakes case as to the trial court's role in
5 this proceeding. I want the parties to understand
6 that it's no reflection on how they presented the
7 evidence, it's this court's interpretation and
8 evaluation of it and what weight I gave to the
9 respective testimony of the experts presented.

10 So thank you for your work and effort
11 in here and your preparedness, and this concludes
12 the hearing.

13 ATTORNEY RAPKIN: Thank you, Your
14 Honor.

15 ATTORNEY SEIBEL: Your Honor, is the
16 City awarded statutory costs?

17 THE COURT: Well, by statute you're
18 awarded statutory costs since the court has
19 rendered judgment in favor of the City.

20 ATTORNEY SEIBEL: Thank you, Your
21 Honor.

22 THE COURT: Statutory costs.

23 ATTORNEY SEIBEL: Yes, Your Honor.

24 THE COURT: And don't overindulge, as
25 so often many prevailing parties do, whether they

1 be plaintiff or defendant.

2 ATTORNEY SEIBEL: Certainly, Your
3 Honor.

4 THE COURT: All right. Thank you.
5 (End of proceedings.)

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STATE OF WISCONSIN)

MILWAUKEE COUNTY)

I, Lori J. Cunico, do hereby certify that
I am a Registered Professional Reporter,
that as such I recorded the foregoing proceedings
later transcribed by me, and that it is true and
correct to the best of my abilities.

Dated this 22nd day of September, 2017, at
Milwaukee, Wisconsin.

Electronically signed by Lori J. Cunico