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John Barrett
Clerk of Circuit Court
2017CV004898

BY THE COURT:

DATE SIGNED: April 12, 2019

Electronically signed by Kevin E. Martens-27
Circuit Court Judge

**STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY**

JSWD COMMERCE, LLC,

Plaintiff,

v.

Case No. 17-CV-004898

Case Code: 30301

CITY OF MILWAUKEE,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JSWD Commerce, LLC (“JSWD”) brought this action under *Wis. Stat. §74.37(3)(d)* seeking a partial refund of real estate taxes imposed by the City of Milwaukee (“the City”) for property located at 736 N. 4th Street, Tax Parcel No. 392- 2961-000 (“the Property”), along with statutory interest. JSWD asserts that the property assessment for the tax year 2016 was excessive. The Court presided over a court trial that took place on October 16-17, 2018. JSWD was represented by attorney Don Mills. The City was represented by attorneys Allison Flanagan and Hannah Jahn. Both parties submitted proposed Findings of Fact and Conclusions of Law after trial. Based on these submissions and the evidence admitted at trial, the Court finds and concludes as follows.

FINDINGS OF FACT

Acquisition and Development of the Property

1. The plaintiff acquired an office building that became the SpringHill Suites Hotel (“the SpringHill”) on December 1, 2014 for \$4,700,000. As part of the transaction, the plaintiff apparently received \$7,000,000 in credits and incentives.
2. The plaintiff began renovation and rehabilitation of the SpringHill in 2015. As of January 1, 2016—the assessment date—construction was approximately 64% completed. As of January 1, 2016, the plaintiff had invested \$9,031,473 in rehabilitating the office building, in addition to the \$4,700,000 purchase price of the property.

Initial Property Assessment and Appeal

3. Timothy Krystowiak was responsible for setting the Property’s 2016 assessment.
4. Krystowiak is an assessment division manager with the City. He holds a state-issued Assessor II certification, has been assessing property for the City for more than twenty-five years, and has assessed all types of property within the City.
5. The Wisconsin Department of Revenue determined that the aggregate ratio of the property assessed in the City was 96.18% as of January 1, 2016.
6. For 2016, property tax was imposed in the City at the rate of \$28.704 per \$1,000 of the assessed value for property.
7. For 2016, the Property was assessed at \$13,721,000.
8. For 2016, the property tax imposed by the City on the Property was \$393,793.
9. The plaintiff was responsible for payment of the property taxes on the Property and was authorized to challenge the property tax assessment.
10. The plaintiff appealed the 2016 assessment of the Property by filing a timely objection

with the City's Board of Assessors and otherwise complying with the requirements of *Wis. Stat. §70.47*.

11. The plaintiff timely paid the property taxes imposed by the City on the Property for 2016, or the required installment thereof.
12. On January 26, 2017, the plaintiff properly served on the City Clerk a Claim for Excessive Assessment pursuant to *Wis. Stat. §74.37(2)*.
13. On March 21, 2017, the City sent a letter to the plaintiff stating that the City Council had disallowed the 2016 Claim in its entirety.

Valuation of the Property - Krystowiak

14. Krystowiak testified credibly at trial regarding the methods and procedures used to assess the Property.
15. Pursuant to *Wis. Stat. §70.32(1)*, the City is required to assess each parcel located in the City in accordance with the Wisconsin Property Assessment Manual (“WPAM”) and at “full value,” which the courts have interpreted to mean “fair market value.”
16. Pursuant to *Wis. Stat. §70.10*, the City values property as of January 1 in each assessment year.
17. To set the 2016 assessment for the Property, Krystowiak was required to determine the fair market value of the Property as of January 1, 2016.
18. As of January 1, 2016, the Property was in the process of being converted from an office building to a hotel – the SpringHill.
19. Krystowiak inspected the Property on January 15, 2016 and met with the project manager, Zane Torgeson.
20. At the time of Mr. Krystowiak’s inspection, nearly 70% of the construction and

renovations were complete—stud walls were installed and mechanicals were roughed in. Contractors were preparing to drywall the Property’s interior. No personal property had been installed.

21. The WPAM and case law outline a three-tier valuation technique known as the *Markarian* hierarchy. See *Adams Outdoor Adver., Ltd. v. City of Madison*, 2006 WI 104, ¶¶ 34-35, 294 Wis. 2d 441, 717 N.W.2d 803.
22. Tier one—the best evidence of value—is a sale of the subject property
23. The Property sold in December 2014 for a total of \$4,700,000. At the time of the sale, the Property consisted of two separate real estate parcels (the Commerce Building and a vacant lot). The Commerce Building sold for \$4.5 million and the vacant lot sold for \$200,000. These parcels were ultimately combined to form the Property.
24. The City’s Assessor’s Office reasonably determined the December 2014 sale was a valid, tier one, sale.
25. The real estate transfer returns, which must be filed by the grantee or agent, indicated the total value of real estate transferred was \$4.7 million. The WPAM directs assessors to review real estate transfer returns as evidence of sale prices. Real estate transfer returns are typically reliable, as there are criminal penalties associated with falsification.
26. Krystowiak was very familiar with both the buyer and seller. Both parties are major entities in the Milwaukee real estate market and are sophisticated, knowledgeable entities who act in their best interests. Krystowiak also reviewed the purchase and sale agreement associated with the sale, which was heavily negotiated with numerous amendments.
27. Although the plaintiff received \$7,000,000 in credits and incentives as part of the

- purchase, there was no reliable testimony describing the nature of these incentives and/or to what extent, if any, they may have impacted the purchase price of the property.
28. At the time of the assessment, JSWD did not provide Krystowiak with any information to support its assertion that the 2014 sale was *not* a market value sale, including reference to the credits and incentives it had received at the time of purchase.
 29. JSWD bears the burden of proving that the 2014 sale was *not* a market value sale based on certain incentives associated with the sale. *See State ex rel. N/S Assocs. by JMB Grp. Tr. IV v. Bd. of Review of Vill. of Greendale*, 164 Wis. 2d 31, 44, 473 N.W.2d 554, 558 (Ct. App. 1991) (“[A] taxpayer contending that a recent sale does not represent the property’s value because the sale was not at arm’s-length has the burden of proving that any circumstance it claims made the sale not an arm’s-length transaction actually affected the price.”). Based on the existing record, it has not met this burden in this case.
 30. The Property was an office building at the time of the 2014 sale.
 31. The Property was no longer an office building as of the January 1, 2016 assessment date, but was being converted into a hotel.
 32. The 2014 sale price, therefore, was not indicative of the fair market value of the Property as of January 1, 2016. It was only a good indicator of the market value of the land and building prior to any conversion.
 33. The next best evidence of a property’s value—tier two—is the recent sales of properties that are comparable to the subject property.
 34. Both Krystowiak and a private appraiser called by JSWD to testify at trial, John VanSanten agree that the highest and best use as improved of the Property as of January 1, 2016 was use as a hotel.

35. Because the market has valued hotel properties through sales, the comparable properties' sale prices may be used to estimate the Property's value. This valuation technique is known as the sales comparison approach.
36. However, as of January 1, 2016, the Property was only a partially completed hotel and Krystowiak was unable to find market value sales of partially completed hotels.
37. Therefore, Krystowiak and VanSanten agree that it is reasonable to not use the sales comparison approach to set the assessment.
38. The next best evidence of value—tier three—includes an income approach and/or a cost approach to value.
39. The income approach captures the amount of income the property will generate over its useful life.
40. The income approach involves estimating market levels of income and expenses to derive a “net operating income” and then dividing that net operating income by a capitalization rate to determine the an estimate of market value.
41. The City's Assessor's office gathers hotel income and expense information from owners and operators of hotels in Milwaukee annually. This income and expense information—to the extent it is consistent with the market—is used in the income approach to assess the hotels that provide it.
42. For hotels that do not report income and expense information, the City's Assessor's office relies on the income and expense information it has received from other Milwaukee hotels to estimate an appropriate level of net operating income which is then capitalized to determine the appropriate value using the income approach.
43. Buyers and sellers of hotel properties rely almost exclusively on the income approach to

- value hotels.
44. To value all hotel properties in the City of Milwaukee in 2016, the City used a uniform capitalization rate of 8.0% before loading it with the tax rate.
 45. The WPAM indicates that estimates of net operating income should be based on “stabilized property operations” and that “the end result should be an assessment that represents the most probable selling price of the property in an arm’s-length transaction in the open market.”
 46. Mr. Krystowiak agreed that, in general, fully-completed and operational hotels located in the City are assessed using the income approach.
 47. However, the Property was only a partially completed hotel as of January 1, 2016 and was not generating any income.
 48. Therefore, performing an income approach in this case would require an assumption that the Property would in fact be completed, and a prediction of revenue and expense categories for a hotel that was under construction and non-operational.
 49. Under these circumstances, it was reasonable for Krystowiak to eschew the income approach as *not* being the most reliable indicator of the Property’s fair market value and to instead value the Property using a cost approach.
 50. The WPAM states that the cost approach is frequently used for new construction or when income and/or expense information is not readily available or not appropriate.
 51. The cost approach considers the value of the land plus the value of the improvements minus depreciation.
 52. To value the Property under the cost approach, Krystowiak started with the \$4.7 million sale price. He believed this was the best evidence of the value of the land and

- improvements prior to any conversion.
53. Krystowiak added to this sale price the actual costs JSWD incurred as of January 1, 2016 in the development of its hotel.
54. There were two contractors renovating the Property— Miano Construction and Wave Renovations.
55. JSWD's American Institute of Architects Contractor Payment forms indicated that, as of 12/31/2015, Miano Construction had completed \$7,340,237 of work and Wave Renovations had completed \$1,691,236 of work.
56. Krystowiak then subtracted \$10,000 to represent the cost of materials that had been purchased, but not yet used on the project.
57. Krystowiak's 2016 assessment, therefore, was calculated as $\$4,700,000 + \$7,340,237 + \$1,691,236 - \$10,000 = \$13,721,472$, which he then rounded to \$13,721,000.
58. At the time Krystowiak set the Property's 2016 assessment, he believed to a reasonable degree of professional certainty that the 2016 assessment signified the Property's fair market value.
59. The Property's 2016 assessment of \$13,721,000 was entered on the City's assessment roll, which included an affidavit averring that this value was derived using the best information available and using professionally accepted appraisal practices.

Valuation of the Property – VanSanten

60. As a private appraiser, VanSanten is required to follow the Uniform Standards of Professional Appraisal Practice ("USPAP").
61. VanSanten prepared a report containing his opinions and certified that his report complied with the USPAP.

62. In February 2017, JSWD retained VanSanten to opine on the fair market value of the Property for January 1, 2015, January 1, 2016, and January 1, 2017.
63. On June 1, 2017, VanSanten provided JSWD with a draft report indicating that the fair market value of the Property as of January 1, 2016 was \$15,100,000 — or \$1,379,000 *more* than the City’s January 1, 2016 assessment.
64. VanSanten’s June 1 report also contained an opinion of value for January 1, 2017 that was \$25,300,000—approximately \$10 million more than his January 1, 2016 value. VanSanten’s 2017 value was also \$10,224,000 *more* than the City’s 2017 assessment for the Property.
65. On June 5, 2017, VanSanten provided JSWD with a new draft report, indicating that the fair market value of the Property as of January 1, 2016 was \$13,000,000, or \$2.1 million less than in his initial draft report. VanSanten also removed his entire 2017 valuation from his report.
66. On June 6, 2017, VanSanten provided JSWD with a final report, indicating the fair market value of the Property as of January 1, 2016 was \$12,400,000. VanSanten’s June 6 final report also did not contain any reference to his 2017 valuation.
67. VanSanten testified at his deposition that he “did not prepare or complete a valuation for 2017.”
68. When asked at his deposition if everything remained constant, would he expect the value of the Property to increase by about \$10 million for 2017, VanSanten testified that he did not know and he would have to do the analysis for 2017.
69. The Court recognizes that a draft report is not the same as a final report. Nevertheless, VanSanten’s deposition testimony appears to be inconsistent with the existence of his

- June 1 report. VanSanten's June 1 draft report contains an entire 2017 valuation that is approximately \$10 million greater than his 2016 valuation.
70. VanSanten testified that his June 1 report was based on a five-year pro forma that had been provided by JSWD. The pro forma contained the Property's actual income and expense information for July 2016 through December 2016 and then financial projections for 2017, 2018, 2019, 2020, and 2021.
71. VanSanten indicated that, after he completed the June 1 report, he learned that the financial projections were erroneously based on the Property being a full-service Marriott instead of a limited-service or select-service SpringHill Suites.
72. A full-service hotel must have "food and beverage revenues greater than 5% of room revenues. A limited-service hotel has lower food and beverage revenues. A third category of hotels, called select-service, applies when a hotel has limited food and beverage revenues but generates revenue from a pantry and/or rental income for space in the building, such as the SpringHill Suites.
73. The financial projections that VanSanten relied on for 2017, 2018, 2019, 2020, and 2021 did not indicate "food and beverage revenues ... greater than 5% of room revenues" for each of the projected years. The financial projections in his draft report, therefore, appear not to be for a full-service hotel, like a Marriott, but for a limited-service (or select-service) hotel like the SpringHill Suites.
74. The purchase and sale agreement for the Property also did not indicate that JSWD would be building a full-service hotel, like a Marriott, but instead referenced the construction of a select-service hotel. The plaintiff, therefore, always knew the hotel was going to be a select-service hotel.

75. It is unlikely that JSWD, an experienced hotel owner, would have made financial projections for the wrong hotel type.
76. VanSanten also decreased his 2016 valuation between the June 1 draft report and his final report because he later learned the hotel was not meeting financial expectations.
77. However, VanSanten conceded that he report was a retrospective appraisal, meaning that he needed to value the Property based on what a prospective buyer would have known as of January 1, 2016.
78. A prospective buyer as of January 1, 2016 would not know the Property's actual financial performance and whether, in June 2017, the Property would be meeting financial expectations.
79. The Court, therefore, finds VanSanten's explanation to be contrary to generally accepted appraisal practices in terms of a retrospective appraisal.
80. VanSanten's final report does not contain an analysis of whether the sale of the Property for \$4.7 million in December of 2014 was a market value sale.
81. The USPAP requires appraisers who are offering an opinion of fair market value to include an analysis of all sales of the subject property from the last three years *in the appraisal report*.
82. VanSanten testified that the \$4.7 million sale of the Property was not a market value sale because someone told him there were incentives related to the sale.
83. He conceded, however, that he had no notes from this conversation, could not remember if the conversation occurred on the phone or in person, and could not remember who told him this information.

84. His testimony regarding these alleged incentives is vague and unsupported, and there is no showing how (if at all) they may have affected the purchase price of the Property.
85. Ultimately, VanSanten did not rely on the \$4.7 million sale of the Property in his valuation. Instead, he valued the property using the income approach.
86. As stated previously, there are two primary ways to value the property under an income approach: direct capitalization and discounted cash flow analysis.
87. The first method—called direct capitalization—converts a single year’s net operating income (NOI) into an estimate of value.
88. Under direct capitalization, an appraiser estimates revenue and expenses for one year, deducts expenses from revenue to obtain NOI, and then applies a capitalization rate to the NOI to get an opinion of value.
89. Direct capitalization, however, is only appropriate when a property is stabilized – that is, has a consistent pattern of revenue and expenses.
90. As of January 2016, the Property was not stabilized, had no hotel income or expenses, and was not even a completed hotel.
91. The other income approach method—called discounted cash flow (DCF) analysis—is used for properties experiencing a fluctuation of income streams.
92. For DCF analysis, the WPAM explains:
- In a discounted cash flow analysis, the appraiser estimates the property’s net operating income over a projected holding period Once estimated, each of the estimated net operating incomes is then discounted to the present using the appropriate present worth of one factor A reversion (net sale price) at the end of the holding period is also estimated and discounted to the present. The value of the property is the sum of the discounted net operating incomes and the discounted reversion value.

93. The DCF analysis is more complicated than direct capitalization, and the USPAP contains an Advisory Opinion cautioning appraisers about their use of DCF analysis in developing an opinion of value and noting that DCF analysis can mislead.
94. Standard 2 of the USPAP requires appraisers to communicate each analysis, opinion, and conclusion in a manner that is not misleading. In DCF analysis, “all of the assumptions (growth rates, decline rates, rental rates, discount rates, financing terms, expense trends, capitalization rates, etc.) directly affecting the conclusion and must be clearly and accurately disclosed *in the appraisal report*.”
95. VanSanten used the DCF approach to value the Property.
96. He first examined a number of market sources to determine that the total income the SpringHill would generate upon stabilization is \$8,017,456.
97. VanSanten then looked to market sources to determine that the total expenses the SpringHill would incur upon stabilization is \$4,539,000. Subtracting the stabilized expenses of \$4,539,000 from the stabilized income of \$8,017,456 resulted in a net operating income upon stabilization of \$3,478,456.
98. VanSanten’s DCF analysis contains cash flow projections for 2016, 2017, 2018, 2019, 2020, and 2021.
99. His report, however, contains no analysis regarding *how* he projected *each* revenue and expense category for years 2016-2020.
100. There is no analysis in VanSanten’s report explaining, for example, how he projected \$485,000 in revenue for “Other Income-Including Parking” in 2017, with a corresponding projection of \$0 in expenses. In 2018, he then projected (without explanation) \$487,000 in revenue for the same “Other Income-Including Parking”

category with a corresponding projection of \$251,000 in expenses. VanSanten projected “Rental Income” for 2016 at \$188,455, but then does not explain why he decreased it in 2017 to \$100,000. The report also does not explain the expenses for “Rental and Other Income” that are projected at \$102,987 for 2016, \$20,000 for 2017, \$17,000 for 2018, and then \$20,000 for 2019.

101. VanSanten did not provide a satisfactory explanation of the reasoning behind these projections at trial.
102. VanSanten did include analysis for his 2016-2020 cash flow projections in the “rooms revenue” category. However, he included the identical analysis in his June 1 report to calculate *higher* rooms revenue projections, and, ultimately, a *higher* 2016 value. No explanation was given for this, and the Court is unable to determine how the same analysis can be used to reach different results.
103. Because VanSanten’s cash flow projections are not adequately explained, the Court cannot find them to be sufficiently reliable.
104. After determining the SpringHill’s net operating income upon stabilization, VanSanten determined the appropriate capitalization rate for the SpringHill to be 8.75%.
105. VanSanten then loaded the capitalization rate with the mill rate, resulting in a loaded capitalization rate of 11.51%.
106. Based on a net operating income upon stabilization of \$3,468,456 and a loaded capitalization rate of 11.51%, VanSanten concluded that the Market Value of the Total Assets of the Business (“MVTAB) upon stabilization in 2021 is \$30,133,327 (= \$3,468,456 ÷ 11.51%).
107. Because the MVTAB upon stabilization in 2021 includes personal property which has to

- be deducted to determine the value of real property, VanSanten deducted the actual \$3,577,786 that the owners incurred in personal property as of January 1, 2016.
108. The MVTAB upon stabilization assumes construction of the SpringHill is complete and operating as a stabilized hotel. Because the SpringHill was only partially constructed as of January 1, 2016, VanSanten determined the remaining construction cost to be expended to be \$9,957,168.
109. An investor purchasing the SpringHill as of January 1, 2016, would be obligated to pay the remaining costs of construction. As a result, such an investor would deduct this planned construction expense from the amount it would otherwise pay for the SpringHill as of January 1, 2016. Therefore, VanSanten deducted this amount from the MVTAB.
110. An investor purchasing the SpringHill as of January 1, 2016 would not realize the full benefit of the stabilized net operating income until 2021. Such an investor would endure years of markedly lower net operating income before stabilization. To account for this shortfall, VanSanten quantified the amount that the SpringHill's net operating income would fall short of the stabilized net operating income in each year starting in 2016. VanSanten attempted to discount the shortfall in net operating income to present value as of January 1, 2016 and deducted \$4,152,000 from the MVTAB upon stabilization.
111. Pursuant to the WPAM, after an appraiser projects cash flows and determines NOI for each projected year, "each of the estimated net operating incomes is then discounted to the present using the appropriate present worth of one factor[.]"
112. Instead of discounting each year's NOI back to present value, VanSanten subtracted each year's NOI from his 2021 NOI and then discounted that difference back to present value, calling the total amount "revenue loss."

113. VanSanten's approach appears to be contrary to the WPAM because it fails to adequately take into account the economic principle of the time-value of money. Because a dollar in 2021 is not worth the same as a dollar in 2017, the difference in 2021 NOI and 2017 NOI does not generate an income loss in 2017 dollars, such that "the 2017 dollars" can now be discounted back to present value to demonstrate the income loss for 2017. VanSanten's entire "Revenue [sic] Loss" analysis appears to suffer from this deficiency.
114. When valuing hotel properties, it is proper to make an additional deduction for business value. VanSanten concluded that the deductions for uncompleted construction costs and personal property adequately accounted for business value and did not make a business value deduction.
115. VanSanten concluded that the market value of the Property as of January 1, 2016 was \$12,400,000.
116. Pursuant to the WPAM, after an appraiser discounts each cash flow back to present value (which VanSanten did not do), "a reversion (net sale price) at the end of the holding period is also estimated and discounted to the present."
117. Here, VanSanten determined that, in 2021, the Property would be worth \$31,133,327. However, instead of discounting that amount back to present value and adding it to the present value of the cash flows, VanSanten subtracted from the \$31,133,327 value his calculation of the "Present Value of Revenue [sic] Loss," "Personal Property" as of January 1, 2016, and "Remaining Construction Costs" to arrive at a value of \$12,400,000.
118. VanSanten also performed a sales comparison approach to verify his income approach value.
119. However, his sales comparison approach uses fully-completed hotels, rather than partially

completed hotels like the Property. He also relies on sales that post-date the January 1, 2016 valuation date.

120. The Court finds the VanSanten’s analysis to be inadequately supported and, therefore, not sufficiently reliable.

CONCLUSIONS OF LAW

121. At the close of JSWD’s case-in-chief, the City moved to dismiss JSWD’s lawsuit on the basis that JSWD had failed to rebut the presumption of correctness attendant to the City’s assessment. The Court took the City’s motion under advisement.
122. In reviewing assessment challenges, the Court must presume that the assessment is correct. *Wis. Stat. § 70.49(2); Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, ¶ 5, 351 Wis. 2d 439, 839 N.W.2d 893.
123. “The presumption of correctness does not apply, though, if the plaintiff presents ‘significant contrary evidence[,]’ or shows that the assessment ‘does not apply the principles in the Property Assessment Manual.’” *Id.* (citing *Adams Outdoor Adver., Ltd. v. City of Madison*, 2006 WI 104, ¶¶ 25, 56, 294 Wis. 2d 441, 717 N.W.2d 803).
124. The City’s 2016 assessment fully complied with Wisconsin assessment law.
125. Pursuant to *Wis. Stat. § 70.32(1)*, the City is required to assess each parcel located in the City in accordance with the WPAM and at “full value,” which the courts have interpreted to mean “fair market value.” *See Flood v. Bd. of Review*, 153 Wis. 2d 428, 435, 451 N.W.2d 422 (1990); *see also Wis. Stat. § 70.32(1)*.
126. The supreme court has “interpreted *Wis. Stat. § 70.32(1)* to set forth a hierarchical valuation methodology for single-property appraisal,” which is known as the *Markarian* hierarchy. *Metropolitan Associates v. City of Milwaukee*, 2018 WI 4, ¶ 31, 379 Wis. 2d 141, 905

- N.W.2d 784 (citing *State ex rel. Markarian v. City of Cudahy*, 46 Wis. 2d 683, 686 (1970)).
- “The best information of a property’s fair market value is an arm’s-length sale of the subject property.” *Id.*, ¶ 32.
127. “Examination of a recent arm’s-length sale is known as a ‘tier 1’ analysis.” *Id.* “If there is no recent sale of the subject property, the appraiser moves to tier 2, examining recent, arm’s-length sales of reasonably comparable properties (the “sales comparison approach”).” *Id.*, ¶ 33. “When both tier 1 and tier 2 are unavailable, an assessor then moves to tier 3.” *Id.*, ¶ 34. “Both the income approach, which seeks to capture the amount of income the property will generate over its useful life, and the cost approach, which seeks to measure the cost to replace the property, fit under the umbrella of tier 3 analysis.” *Id.*
128. The Court concludes that the \$4.7 million sale was a tier one sale that represented the best evidence of market value of the Property (building and land), prior to any conversion to a hotel.
129. The plaintiff has not met its burden to prove that the sale was not at arm’s length. *See State ex rel. N/S Assocs. by JMB Grp. Tr. IV v. Bd. of Review of Vill. of Greendale*, 164 Wis. 2d 31, 44, 473 N.W.2d 554, 558 (Ct. App. 1991) (“[A] taxpayer contending that a recent sale does not represent the property’s value because the sale was not at arm’s-length has the burden of proving that any circumstance it claims made the sale not an arm’s-length transaction actually affected the price.”). JSWD has not offered evidence sufficiently detailed or reliable to support its assertion that the sale was not arm’s-length.
130. VanSanten’s testimony at trial regarding purported incentives did not address how, or to what extent, they may have actually affected the \$4.7 million sale price that was negotiated between two sophisticated entities.

131. As of January 1, 2016, the Property was in the process of being converted to a hotel and was approximately 70% complete. Therefore, while relevant, the \$4.7 million sale is not dispositive of the Property's value as of January 1, 2016.
132. The cost approach was the most reliable indicator of value, given the lack of comparable sales of partially-constructed hotels, and the fact that the incomplete hotel was not able to generate income on the date of value, making an income approach unreliable.
133. The cost approach conducted by Krystowiak was done in compliance with the WPAM and professionally acceptable appraisal practices, considers JSWD's own reported construction costs, and is a reliable indicator of the fair market value of the Property.
134. JSWD has not offered persuasive evidence to support its assertion that there was functional obsolescence of the Property as of the valuation date.
135. A comparison between the Property's 2016 and 2017 assessments does not suggest that the cost approach was not appropriate. The 2017 assessment was not at issue in this case. There was no evidence introduced as to how the 2017 assessment was derived or what a prospective buyer as of January 1, 2017 would have known about the Property.
136. The cost approach, rather than the income approach, was the more reliable indicator of value in this case. The Property was only a partially completed hotel as of the January 1, 2016 valuation date with no hotel income. The WPAM explicitly directs assessors that, "In the case of partially completed improvements as of the statutory assessment date, the assessor must value those improvements as they exist on that date." The WPAM also provides: "The cost approach is frequently used for new construction ... or when sales and income/expense information are not readily available or not appropriate."
137. Mr. Krystowiak's testimony was credible and his approach was authorized by the

WPAM.

138. JSWD has not established the City's assessment failed to apply the principles of Wisconsin Assessment Law. JSWD therefore has not rebutted the presumption of correctness in that regard.
139. If unable to show that the assessor did not follow Wisconsin assessment law in setting the assessment, JSWD may rebut the presumption of correctness attendant to the City's assessment if it presents "significant contrary evidence." *Bonstores*, 351 Wis. 2d 439, ¶ 5. Specifically, JSWD must "produce evidence that it is more probable than not that the assessed value is not correct." *Id.*, ¶ 9. However, "the presumption (that the City assessed value is correct) does not disappear simply because contrary evidence exists." *Id.* Stated another way, "the Presumption is not 'overcome' just because contrary evidence (even 'substantial' contrary evidence) is presented." *Id.*, ¶ 6.
140. VanSanten's testimony and opinions do not constitute evidence that it is "more probable than not that the assessed value is not correct." *See id.*, ¶ 9.
141. VanSanten's testimony regarding the issue of the 2017 valuation does not appear to be credible. Although he testified at deposition that he did not "prepare or complete a valuation for 2017", his June 1 report contained such an evaluation.
142. He also testified that he changed his 2016 value from the June 1 draft report in his final report because he learned that the financial projections were for a full-service Marriott. However, those financial projections were actually *not* for a full-service hotel because the food and beverage projections did not equal five percent of room revenue and therefore did not meet the full-service definition.
143. VanSanten's 2016 valuation, at points, appears also to be contrary to the WPAM and/or

inconsistent with the USPAP.

144. In his income approach, VanSanten failed to follow the method outlined by the WPAM when performing his DCF analysis.
145. In addition, contrary to the USPAP, he had no analysis in his report regarding how he derived each of his cash flow projections within his DCF, leaving those determinations to be a matter of speculation. VanSanten also reached different conclusions based on the same analysis in both his June 1 report and his June 6 report. This affects the reliability of his conclusions.
146. Contrary to USPAP, VanSanten's report does not analyze whether the \$4.7 million sale was a market-value sale. His testimony on this point was not supported by any documentation.
147. The Court also finds VanSanten's sales comparison approach to be unreliable because it only includes fully-completed hotels and almost all of the sales occurred after the January 1, 2016 valuation date. He also has the same analysis in both his June 1 draft report and his final report, just different number conclusions—one higher and one lower.
148. VanSanten's opinions and testimony do not amount to significant contrary evidence, and JSWD therefore has not rebutted the presumption of correctness attendant to the City's assessment.
149. Alternatively, even if JSWD had rebutted the presumption of correctness attendant to the City's assessment, the presumption, if rebutted, merely shifts the burden of presenting evidence to the other party. *Wis. Stat. § 903.01*; see also *J.C. Penney Co. v. Wisconsin Tax Comm'n*, 238 Wis. 69, 298 N.W. 186, 191 (1941) (“Being a rebuttable presumption it is clearly within the power of the Legislature to create it. Evidence having been introduced which rebuts it, the controversy must be determined upon general principles

- of law.”).
150. If the presumption had been rebutted—which it was not—the Court must consider the City’s evidence and decide the case on the “general principles of the law.” *See J.C. Penney Co.*, 298 N.W. at 191.
151. The “general principles of the law” require the Court to determine whether the City’s 2016 assessment was excessive. *Wis. Stat. § 74.37; Metropolitan Associates*, 379 Wis. 2d 141, ¶ 40 (“The question on appeal in a *Wis. Stat. § 74.37* action is not whether the initial assessment was incorrect, but whether it was excessive.”).
152. The Court concludes the City’s 2016 assessment was not excessive. The best evidence of a property’s value is a tier-one sale. Here, the Property sold for \$4.7 million in 2014. JSWD then began converting the Property into a hotel. Because the Property was only partially complete as of the January 1, 2016 valuation date, the City added the actual cost of construction to the sale price. This is the best evidence of fair market value.
153. As an alternative to awarding judgment in its favor, JSWD has also asked this Court to order a reassessment under *Wis. Stat. § 74.39*.
154. However, because JSWD has not rebutted the presumption of correctness attendant to the City’s assessment and has not alternatively shown the City’s assessment was excessive, the Court may not order a reassessment.
155. Only after “a circuit court *determines an assessment was excessive*, ‘the court, before entering judgment, shall continue the action to permit reassessment of the property.’” *West Capitol, Inc. v. Village of Sister Bay*, 2014 WI App 52, ¶ 50, 354 Wis. 2d 130, 848 N.W.2d 875 (quoting *Wis. Stat. § 74.39*) (emphasis added).

156. Here, JSWD is not entitled to a reassessment if it has not rebutted the presumption of correctness or offered sufficient proof that the assessment was excessive.
157. This Court concludes a reassessment is not appropriate because JSWD has failed to meet its burden of proof at trial.
158. The Court concludes that JSWD failed to rebut the presumption of correctness attendant to the City's assessment and, therefore, the case is hereby **DISMISSED**.