BY THE COURT:

DATE SIGNED: January 6, 2020

Electronically signed by Clare L. Fiorenza-03
Circuit Court Judge

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 3 | MILWAUKEE COUNTY

NORDSTROM, INC.,

Plaintiff

v.

Case No. 2016CV5157
Case No. 2016CV5377

CITY OF WAUWATOSA,

Defendant.

DECISION AND ORDER SUSTAINING THE CITY OF WAUWATOSA'S TAX ASSESSMENTS

This matter comes before the Court on a challenge to a property tax assessment pursuant to Wis. Stat. § 74.37(3)(d). Plaintiff Nordstrom, Inc. ("Nordstrom") seeks a partial refund of property taxes paid to Defendant City of Wauwatosa ("the City") based on its assessment of Nordstrom's department store at Mayfair Mall for the tax years 2015 and 2016. The parcel of real property is located at 2424 North Mayfair Road within the City and identified in the City records as Tax Parcel No. 335-9998-22 ("the Property"). For 2015, the City set the assessment of the Property, then partially constructed, at $12,298,300.00. For 2016, the City set the assessment of the finished Property at $29,905,000.00. Nordstrom asserts that it has presented significant contrary evidence that its property tax assessments for 2015 and 2016 were excessive and not formulated in accordance with the Wisconsin Property Assessment Manual ("the WPAM"). After careful consideration of the evidence presented at the trial and the parties' additional filings, the Court concludes that the assessments were not excessive. The Court sustains the City's assessments at issue and denies Nordstrom's claims for relief.

BACKGROUND

On November 29, 2012, Nordstrom and GGP, the Mayfair Mall operator ("GGP"), signed a letter of intent to construct a new Nordstrom department store at Mayfair Mall. The City issued building permits for construction of the new store in July 2014. GGP and Nordstrom executed several legal agreements in August 2014, including the Separate Agreement, which contained the contractual terms to build the Property, and the Construction, Operation and Reciprocal Easement Agreement ("COREA"). A Memorandum of Separate Agreement was filed with the Milwaukee County Register of Deeds on August 19, 2014.

Nordstrom purchased 1.7 acres of land at Mayfair Mall from GGP. The parcel of land was assigned its own tax key. Nordstrom recorded a special warranty deed with the Milwaukee County Register of Deeds on August 19, 2014. The purchase price was $10.00 and Nordstrom paid a transfer fee of $3,521.10. The Property opened as a Nordstrom department store on October 23, 2015. The finished Property is approximately 150,000 square feet.

2015 Assessment

The Property was partially completed as of January 1, 2015. The City did not receive any information on the Property; therefore, it set a doomage assessment, which is its best estimate. The City Assessor set the initial assessment for the Property at $16,772,200. Upon receipt, Nordstrom representatives attended Open Book, which is when property owners can discuss concerns with the City Assessor. Nordstrom filed its notice of objection with the City Clerk. On May 13, 2015, the Board of Review issued a subpoena to Nordstrom. Nordstrom responded to the subpoena and submitted materials and information on actual project costs. The City Assessor reviewed the project costs submitted by Nordstrom and asked the Board of Review to reduce the assessment of the Property. The Board granted her request and reduced the assessment to $12,298,300.00 on June 23, 2015. The City imposed $286,893.96 in tax on the Property for tax year 2015 and Nordstrom timely paid.

Nordstrom appealed the 2015 assessment by personally serving on the City Clerk a Claim for Excessive Assessment pursuant to Wis. Stat. § 74.37(2). The 2015 claim was deemed disallowed because the City failed to take action on it for 90 days after receipt. Nordstrom then filed an action in Milwaukee County Circuit Court, case number 16-CV-5377, which was consolidated with the 2016 tax year challenge.

2016 Assessment

For 2016, the City Assessor, Shannon Krause, set the initial assessment for the Property at $40,907,700. Nordstrom representatives again attended Open Book. The Board of Review issued a subpoena for more information, which Nordstrom provided. The City Assessor reviewed the information and revised the assessment. The Board of Review accepted the recommendations and the final assessment was set at $29,905,000.00. Nordstrom filed an objection to the Board of Review pursuant to Wis. Stat.

§ 70.47. By virtue of a hearing waiver pursuant to Wis. Stat. § 70.47(8m), the Board of Review sustained the 2016 assessment on the merits without a hearing. The City imposed $708,552.74 in tax on the Property for tax year 2016 and Nordstrom timely paid.

Nordstrom served the City with the required notice and filed an action in Milwaukee County Circuit Court, case number 16-CV-5157, which was consolidated with the 2015 tax year challenge.

LEGAL STANDARD

Assessments in Wisconsin are governed by Wisconsin Statutes Chapter 70. Wis. Stat. § 70.32(1), provides that real property must be valued at "full value":

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

In Wisconsin, case law relies upon statutory authority and the WPAM to define the assessor's task:

> ...a property assessor's task is to identify the market value of a fee simple interest as described by the Property Assessment Manual, and which reflects the "full value" that could ordinarily be obtained at a private sale, as defined by Sec. 70.32(1).

Walgreen Co. v. City of Madison, 311 Wis. 2d 158, 173, 752 N.W.2d 687 (2008).

An assessor determines the full and fair market value of property. "The statutory rule of assessment of real estate is to assess it at its sale value, and not at its intrinsic value, if that differs from the sale value." *State ex rel. Northwestern Mutual Life Ins. Co. v. Weiher*, 177 Wis. 445, 188 N.W. 598, 598 (1922). The assessor must consider the marketplace as it exists, not a hypothetical market. *See Metropolitan Holding Co. v. Bd. of Review of City of Milwaukee*, 173 Wis. 2d 626, 631, 495 N.W.2d 314 (1993); *Nestle USA, Inc. v. Wisconsin Dep't of Revenue*, 2011 WI 4, ¶ 34, 331 Wis. 2d 256, 795 N.W.2d 46. "[A] property's highest and best use is often a determinative factor in the assessor's decision on which assessment approach to rely on in appraising the subject property." *Nestle*, 2011 WI 4, ¶ 32. "[A] subject property's highest and best use must be: 1) legal, 2) complementary, 3) not highly speculative, and 4) marketable for that use." *Id.* ¶ 33.

The WPAM provides that "[c]ommercial property can be valued by either single property or mass appraisal techniques." (WPAM 9-7.) "Mass appraisal is the systematic appraisal of groups of properties, as of a given date, using standardized procedures and statistical testing." (WPAM 7-41.) "Mass appraisal stands in contrast to single property appraisal, which is the valuation of a single particular property as of a given date." *Metropolitan*, 379 Wis. 2d 141, ¶ 30. "A single property appraisal focuses on the unique characteristics of the subject property within the strictures of the methodology set forth in *Markarian* [*v.*

City of Cudahy], 45 Wis. 2d 683, 173 N.W.2d 627 [1970]." *Id*. "This methodology has been further described in the courts as providing for three 'tiers' of analysis." *Id.* ¶ 31.

In *Markarian,* the Wisconsin Supreme Court "interpreted Wis. Stat. § 70.32(1) to set forth a hierarchical valuation methodology for single-property appraisal." *Metropolitan,* 379 Wis. 2d 141, ¶ 31 (citing *Markarian*, 379 Wis. 2d at 686). "The best information of a property's fair market value is an arm's-length sale of the subject property." *Id.* ¶ 32. "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.

For a Tier 2 sales comparison analysis, the characteristics of comparable properties are those properties that "represent the subject property in age, condition, use, type of construction, location, number of stories, physical features and economic characteristics." (WPAM 7-18.) When a comparison property is more similar to the appraised property, the sales price is more valid "as an indicator of the value of the subject property." *Id.* An assessor is "not limited to sales that occur in the municipality they are currently assessing." (WPAM 7-26.) An assessor may search for comparable properties in the surrounding area and make adjustments as necessary for location. *Id.* "Appraisers typically use the [Tier 2] sales comparison approach in markets where adequate sales exist." *Id.* An appraiser may only use methods supported by sufficient data to "develop an opinion of value." (WPAM 7-23.)

"When both tier 1 and tier 2 are unavailable, an assessor then moves to tier 3." *Metropolitan,* ¶ 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.* Within Tier 3, the factors include "cost, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, amount of insurance carried, value asserted in a prospectus and appraisals produced by the owner." *State ex rel. Mitchell Aero, Inc. v. Bd. of Review*, 74 Wis. 2d 268, 278, 246 N.W.2d 521 (1976).

The cost approach is premised on the principle of substitution. In other words, "a well-informed buyer will pay no more for a property than the cost of constructing and equally desirable substitute property with like utility." (WPAM 7-30.) The cost approach is typically employed "in cases of new or special purpose structures or where limited sales or rental data exists." (WPAM 7-24.) Within the cost approach, there are two methods of estimating the cost of the structure: reproduction cost and replacement cost. Reproduction cost "represents the cost of an exact replica of the structure suing the same materials, design and quality of workmanship. Replacement cost is the cost of a structure having the same utility but using current materials, designs, and methods." (WPAM 7-30.)

After estimating the reproduction or replacement cost, the appraiser subtracts "depreciation, functional obsolescence, and tax-exempt components . . . from that estimated cost to reach a final value."

Nestle, 2011 WI 4, ¶ 13. An assessor must consider functional obsolescence in a reproduction cost analysis because an exact reproduction may include obsolete features. "This is not necessary when using replacement cost because the functional obsolescence is eliminated by using current materials, design, and workmanship." (WPAM 7-30.) Further, an assessor must consider whether economic obsolescence lowers the value of the property "due to factors outside the property." (WPAM 7-34.)

The income approach is typically employed for "income-producing properties and when an active rental market exists." (WPAM 7-24.) The income approach is "based on the principle of anticipation. It is the calculation of present value based on anticipated future benefits." (WPAM 7-22.) "Where there is sufficient data to estimate market value under both the income and cost approaches, "[a]ssessors should select a final estimate of value through the process of 'reconciliation'" *Adams Outdoor Advert., Ltd. v. City of Madison*, 2006 WI 104, ¶ 54, 294 Wis. 2d 441, 467, 717 N.W.2d 803 (quoting WPAM 7-18.)

The City's property assessments are presumed to be correct, and the plaintiff taxpayer bears the burden of overcoming that presumption. Wis. Stat. § 70.49(2); *Walgreen*, 2008 WI 80, ¶ 17. "The presumption of correctness does not apply, though, if the challenging party presents significant contrary evidence or shows that the assessment does not apply the principles in" the WPAM. *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, ¶ 5, 351 Wis. 2d 439, 839 N.W.2d 893 (internal citations omitted). After the assessed value "is established, Wis. Stat. § 903.01 shifts the burden of producing evidence to the opponent" of the assessed value "to produce evidence that it is more probable than not that the assessed value is not correct." *Id.* ¶ 9. The taxpayer bears the burden of proof to show by reasonably direct and unambiguous evidence that the assessment does not follow the law. *Sausen v. Town of Black Creek Board of Review*, 352 Wis. 2d 576, 592, 843 N.W.2d 39 (2014). The burden of proof remains with the taxpayer in all conditions and does not shift to the city. *Doneff v. City of Two Rivers Board of Review*, 184 Wis. 2d 203, 216-217, 516 N.W.2d 383 (1999).

TRIAL TESTIMONY

During the 11 day trial, the Court heard testimony from Paul Bakken, Nordstrom's expert witness; Catherine Corteau, an employee of Nordstrom; Shannon Krause, City Assessor for the City of Wauwatosa; Larry Nicholson, an expert appraiser who assisted the City and was called adversely by Nordstrom; William Miller, the City's expert witness; and Dr. Thomas Hamilton, the City's expert witness.

Expert Witness: Paul Bakken

Nordstrom called Paul Bakken ("Bakken") as its expert witness. Bakken holds a Certified Federal General Appraisal license and MAI designation (Member Appraisal Institute); he is also a Certified Investment Commercial Member and Counselor of Real Estate. He has over 30 years of experience at appraising commercial real estate. He prepared two reports on the market value of the Property on January

1, 2015 and January 1, 2016. He testified that his final opinion for the market value of the Property was $5 million for tax year 2015 and $14.5 million for tax year 2016.

Bakken concluded the highest and best use of the Property was "as is" in a continuation in retail.

Bakken testified that the highest and best use of the Property was "as is," in a continuation in retail. He thought the Property's highest and best use was an anchor department store, not a high-end, luxury anchor department store. Bakken stated that Nordstrom is the best department store in Wisconsin; further, Mayfair Mall is a Class A mall and the only super-regional mall in Wisconsin. Bakken offered the opinion that it is improper under Wisconsin law to apply too narrow market segmentation, per *Walgreens.*[1] Bakken explained that he did not consider high-end, luxury anchor department stores to exist in a limited market because there were likely buyers in the marketplace other than the current owner.

Bakken's Tier 2 sales comparison analysis was not a reasonable indication of market value.

Bakken was the only expert who testified that a Tier 2 sales comparison analysis was relevant and appropriate. Bakken looked for comparison sales in three sets of data: big box retail stores, national anchor properties, and mall anchor stores. Bakken reviewed fourteen possible comparable sales of big box standalone stores to set the lower end of value in his bracketing analysis. Bakken looked nationally at two anchor stores. The Court excluded Bakken's proffered evidence about the mall anchor department stores because his own report provided that these properties were merely illustrations and did not yield an indication of value on the Property. Bakken concluded that the appropriate market value for the Property was $100 per square foot; therefore, for the 150,000 square foot Property Bakken determined that market value was $15 million. The Court finds that a Tier 2 sales comparison is not supported by the evidence presented.

Bakken's Tier 3 analysis focused on the obsolescence in the Property.

Bakken performed two cost approach analyses—reproduction cost through the actual costs and replacement cost—and an income approach analysis. Bakken testified that the cost approach may be the most relevant and reliable approach without excessive obsolescence. Bakken concluded that obsolescence lowered the value of the property in all of his analyses. For the Tier 3 valuations, Bakken calculated land value for the Property separately. Bakken found that comparable land value was in the range of $12-$26 per square foot; he ultimately concluded that the land value of the Property's is $20 per square foot, or $1.5 million. He explained that he considered the land value to be on the lower side of the range because it was on the back side of the mall.

[1] *Walgreen Co. v. City of Madison*, 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687.

Bakken's reproduction cost analysis set the market value at $15.6 million.

Bakken testified that to calculate reproduction cost, he started with the actual cost to construct the property, which was $54 million. He subtracted personal property, which reduced the reproduction cost to $37 million. Bakken converted the "value in use" to "value in exchange" and he deducted approximately $6.5 million. This reduced the reproduction cost to $31 million. After deducting functional obsolescence, the adjusted cost was $26.6 million. Finally, Bakken deducted $12.5 million for economic obsolescence. He determined the market value of the Property improvements was $14 million. Combined with the land value he calculated at $1.5 million, Bakken determined that the market value of the Property by the reproduction cost approach is $15.6 million.

Bakken's replacement analysis set the market value at $16 million.

Bakken performed a replacement cost analysis using a common appraisal tool, the Marshall Valuation Service ("MVS"). Bakken determined the Property was in the Class A department store category with excellent finishes. After making adjustments to the MVS characterizations, Bakken's initial base cost was $30.9 million. With additional soft costs and site improvement, Bakken determined the replacement cost to be $34,552,000. Bakken deducted 20% for functional obsolescence and 47% for economic obsolescence. Bakken determined that the market value was $16 million.[2]

Bakken's conversion from the value in use to the value in exchange is not supported by the WPAM.

Bakken explained that an appraiser must convert the cost from the "value in use," which he stated was the value of the Property to Nordstrom, to "value in exchange," which he stated was the market value of the property in an arm's length transaction. Bakken concluded there were branding elements and finishes in the Property that had no value in the open marketplace—the value in exchange—but instead only had value to Nordstrom—the value in use. Bakken believed his definition of "value in exchange" was the same as the definition of "market value" in the WPAM. (*See* WPAM 7-7.) Bakken also testified that "value in exchange" is not a concept of a standard of value in the WPAM. The Court found Bakken's testimony contradictory and less reliable on how he explained the removal of branding elements such as flooring and wall coverings. At one point, he stated that only the excess value of the branding elements were removed from the cost calculation; however, later he stated that when these elements were removed from the cost, there was nothing left in those categories.

Bakken's obsolescence analysis steeply reduced the market value of the Property.

Bakken testified that in a replacement cost valuation as defined in THE APPRAISAL OF REAL ESTATE, Fourteenth Edition (hereinafter "the Fourteenth Edition"), an appraiser must consider external

[2] Bakken acknowledged math errors in his calculations; his replacement cost valuation should be $15,340,000 not $16,150,000.

economic and functional obsolescence. Bakken based his depreciation opinions on the Fourteenth Edition, specifically that depreciation can begin in the design phase or the moment construction is started, even in a functional building that is the highest and best use of a site. He stated that new buildings can have functional obsolescence even before they are constructed, which is usually attributable to a design that does not meet market standards. Bakken determined the Property was 58% obsolete the day it was built.

Bakken deducted $12.5 million (or 47%) for economic obsolescence.

Bakken stated that in the WPAM, economic obsolescence refers to deductions for external factors that reduce the market value of property. (WPAM 7-34.) Bakken deducted $12.5 million for economic obsolescence in the reproduction (actual) cost analysis. Bakken analyzed the retail marketplace and concluded that the overall retail market was weak and that subsidies were required to build retail projects. Further, GGP made a $12.5 million subsidy payment to Nordstrom as part of the Separate Agreement.

Bakken testified that the deduction for economic obsolescence, although the exact dollar amount of the subsidy payment, was not solely chosen because that was the amount of subsidy. Bakken stated that there is no support in the WPAM to calculate economic obsolescence by deducting a subsidy from the valuation. He explained that $12.5 million equaled 47% of his reproduction cost calculation. Bakken testified that he used the same 47% percent deduction for economic obsolescence in his appraisal of the newly remodeled Macy's at Southridge Mall. In Bakken's replacement cost analysis, he also deducted 47% for economic obsolescence. The Court was unpersuaded by Bakken's testimony to the calculation of economic obsolescence in his cost approach analysis.

Bakken did not rely on the WPAM in his functional obsolescence analysis.

Bakken did not think that time was a necessary factor to find functional obsolescence or that it applied only to old properties. Bakken believes that businesses build obsolete buildings as a business strategy. He did not rely on a specific section of the WPAM. Bakken testified that although the property was built to Nordstrom's standard, it was not built to the market standard from the time it was built until the date of valuation. Bakken considered four areas of the Property to be superadequacies: the exterior veneer wall, ceilings, electrical and lighting, and HVAC. Those four areas had enhancements that Bakken considered above the necessary utility and market standard. Bakken stated that the excess costs of the superadequacies should be subtracted from the project cost in determining the market value of the Property. Furthermore, Bakken testified that the Property is less valuable because it only includes 1.7 acres of land and was on the back side of the mall.

Bakken's income approach analysis set a market value of $14 million.

Bakken used the income approach to check his valuation of the Property. He determined four properties were reasonable comparisons for the Property; he used bracketing to determine a rental rate of $7.50 per square foot, which he increased to $12.68 per square foot with operating expenses and property

tax. Calculated on the Property's 150,000 square foot, the market value was $14 million. Bakken's income approach analysis relied on concepts not found in the WPAM. Bakken relied on market rent, lease length, and credit strength as factors to adjust a leased fee to a fee simple interest, which is not in the guidance in the WPAM.

Bakken's 2015 appraisal had a deduction for 60% obsolescence in the Property.

Bakken testified that on January 1, 2015, for the analysis of value on that day, the Property was approximately 19% complete. Bakken stated that partially completed properties do not have comparable sales because no one buys partially completed construction. Bakken credibly testified that for 2015, the cost approach is the only valuation method that makes sense. He started with the construction costs actually incurred by Jan 1, 2015, which totaled $10.3 million. He then subtracted $1.9 million for equipment, interest, consultants, and branding, for an adjusted cost of $8.4 million. Bakken increased the economic obsolescence in the Property to 60% from the 47% figure he determined in 2016. This was an approximately $5 million deduction from the actual costs. He increased the deduction because of the partially completed nature of the Property. He found the building and improvements were worth $3.3 million and the land remained worth $1.5 million. He rounded his calculation for a $5 million market value.

Witness: Catherine Corteau

Nordstrom called Catherine Corteau, the director of the property tax department at Nordstrom.[3] Corteau has worked for Nordstrom for about three years, and prior to that had experience in retail and accounting. Corteau testified that Nordstrom collected and provided everything requested by the City in 2015 and 2016. She stated that Nordstrom did not voluntarily provide information, but she complied with the Board of Review's subpoena. Corteau stated that as a three-story store, the Property was atypical because it did not connect to the mall on all three levels. Corteau testified that there were other recently opened Nordstrom stores that had more than two stories. She thought that having the store on the back side of the mall was a detriment.

Corteau described Nordstrom's position in the retail marketplace and offered the opinion that Nordstrom's competitors are the entire universe of anchor department store over 100,000 square feet. Corteau testified that she was unaware of any sales of newly constructed Nordstrom stores for less than half of the cost paid to construct the store. Corteau testified that she has seen sales of former Nordstrom stores for between $21 and $70 per square foot; however, those properties were not in use as Nordstrom stores at the time of sale. Nordstrom does not sell buildings that are currently operating as Nordstrom stores.

[3] The Court noted that Ms. Corteau was deposed in her personal capacity, not as a representative for Nordstrom. No representative of Nordstrom was subpoenaed to offer testimony on behalf of the corporation. (Tr. 10-2-2018 PM 6:15-23.)

Witness: Shannon Krause, City Assessor

Nordstrom called Shannon Krause, the City Assessor for the City of Wauwatosa, as a witness adversely. She has served as the City Assessor since 2014. Prior to this position, she was the statutory assessor for the City of West Bend for seventeen years. She holds an associate's degree in Property Assessment. Krause is the statutory assessor who signs the assessment roll.

Krause employed expert assistance from Larry Nicholson of the Nicholson Group LLC, to perform the base calculations for reproduction and replacement costs using MVS. Krause testified that she had worked with Nicholson extensively on the characteristics of Nordstrom to use in his analysis. Krause explained that Nicholson did not appraise the Property and he did not determine the assessed value of the Property. Krause testified that although she employed Nicholson as expert assistance, she gathered information about the Property and she determined the appropriate functional and economic obsolescence to deduct. Krause testified that she did not obtain approval from the Wauwatosa City Council to employ Nicholson. She did not know if Nicholson is a licensed assessor.

Krause concluded the highest and best use of the Property was a high-end, luxury department store.

Krause testified that the highest and best use of the Property is a high-end, luxury department store. She based her determination on the factors in the WPAM, specifically location, use of the property, marketability, and physical characteristics. (WPAM 7-12.) Krause believed that Mayfair Mall was the best mall in the state and the most desirable retail location. She considers high-end, luxury department stores to have shared characteristics of high end finishes and great locations.

Krause used mass appraisal techniques to set the land value of the Property at $2 million.

Krause testified that the City of Wauwatosa re-evaluated the value of all land parcels in the city in 2013, prior to her employment with the City. Because the re-evaluation covered all 18,000 parcels in the City, the land was valued under mass appraisal techniques. Krause relied on the city-wide land evaluation to assess the Property's land value for 2015 and 2016. Using mass appraisal techniques, Krause concluded the land value was $2,026,000.00.

Although Nordstrom purchased the land for a purchase price of $10, Krause reasonably concluded that $10 was not the market value of the land because that price was part of a contractual agreement and not from open marketplace of buyers and sellers. Krause explained that in Wisconsin real estate transfer fees are calculated as thirty cents for every $100 of value; therefore, the $3,521.10 transfer fee that Nordstrom paid would equal an expected value of approximately $1.1 million for the land parcel.

Krause reviewed three additional land sales; she adjusted the sales using her judgment and experience to make comparisons. Because the additional land sales data points were in line with the 2013 land evaluation, Krause was comfortable using the 2013 evaluation data to calculate the land value for the

Property. The Court notes that Krause relied on a sales listing that fell through, not an actual sale, which was not supported under the WPAM.

Krause had a reasonable basis to not perform a Tier 2 analysis.

Krause testified that she did not perform a Tier 2 sales comparison for the Property for tax year 2015 or 2016. Krause testified that under the WPAM, an appraiser or assessor must analyze the data behind any sales or transaction to determine it is a market indicator. (WPAM 7-24.) She did not find any reasonable comparable properties which would reliably indicate market value for the Property. Krause did not deem reliable the five comparable sales that Nordstrom submitted prior to the Board of Review for 2016. She testified that other anchor department stores at Mayfair Mall would potentially be the best evidence of comparable value; however, neither Macys nor Boston Store were reasonable options due to age, size, construction, and finish. Further, Boston Store's recent sale was part of a lease buyback package sale, which is not appropriate as a sale comparison and was not used as the source for that property's assessed value. Krause testified that there are no reasonable comparisons to high-end anchor department stores in Wisconsin.

Krause's 2015 assessment was a market value of $12.2 million.

As of January 1, 2015, the Property was partially constructed. Krause testified that there were no comparable sales in 2015 for partially completed property because no one buys partially completed buildings. Krause explained that she could not revise the assessment after she signed the Assessment Role at the first meeting of the Board of Review because after that only the Board of Review can modify the assessment.

Krause testified that she employed the cost approach for tax year 2015. Krause reviewed the submitted projects costs as of December 15, 2014, which is as close to January 1 that she could find. She did not deduct functional or economic obsolescence because it was a new building and she saw no indicators that would support reducing the valuation. Krause testified that because Nordstrom did not file a personal property tax return in 2015, she could not use the return to separate personal from real property. Krause stated that several non-realty personal property items were included in the projected costs supplied by Nordstrom. Krause stated that an assessor has discretion to consider whether items that might be considered personal property might also be considered real property.[4]

Krause's 2016 assessment was credibly based on the cost approach.

The WPAM instructs the assessor to use the cost or income approach for large retail stores without comparison sales. (WPAM 9-7.) Krause relied on the cost approach for the tax year 2016 assessment. The City Assessor set the initial assessment at $40 million using the best available information. Krause took the

[4] The Court notes that under Wis. Stat. § 70.03, fixtures can be considered real property for assessment purposes.

reproduction cost analysis Nicholson calculated using MVS, then considered the issues of depreciation and obsolescence and determined that none existed. She forgot to include land value in the initial assessment, which is an error because land value should be included under the WPAM. Krause testified that there was a limited market for high-end anchor department stores in Wisconsin.

During Open Book, Krause met with Corteau and Nordstrom's counsel to discuss their concerns that the assessment was too high because Nordstrom's branding elements were being overvalued. Krause then asked Nicholson to run the replacement cost valuation in MVS, which resulted in a lower value. Krause wanted a more generic or general anchor store replacement cost to satisfy Nordstrom's complaint about branding. Nicholson's replacement cost analysis set the value of the improvements at $27.3 million.

Krause determined no functional or economic obsolescence loss deductions were appropriate in the replacement cost analysis. She considered the factors of economic obsolescence in the WPAM and she believed that none of them applied. Krause stated that in the WPAM, obsolescence occurs over time. (WPAM 7-32.) Unlike a reproduction cost analysis, an assessor does not deduct functional obsolescence in a replacement cost analysis because that calculation is based on new materials. (WPAM 7-30.) Krause added in the land value and determined the revised assessed value should be $29.9 million.

There are multiple TIFs in Wauwatosa. Krause has never had a property owner ask for a reduced assessment because of a TIF subsidy or for branding costs; she does not deduct TIF subsidies from the value of the properties in the TIF zone. Although Bakken removed the branding costs in his conversion from value in use to value in exchange, Krause did not think that was called for under the WPAM. Krause testified that the Property had very high quality fixtures, but nothing that seemed specific or useful only to Nordstrom.

Krause's income approach confirmed the market value.

Krause checked her market value using the income approach in compliance with Chapter 9 of the WPAM on commercial property. She looked at four leases from 2009, 2013, 2014, and 2015, which she chose because they were new construction and recently executed. They were smaller properties, about one-third the size, and of lesser quality. None of rental comparisons were from mall anchor department stores and none of them were Class A or luxury stores. She testified that no larger properties were available for reasonable comparison. Krause did not find the lease data for the other department stores at Mayfair to be comparable because the adjustments for age and condition were too great.

Expert Witness: Larry Nicholson

Nordstrom called Larry Nicholson, an expert witness for the City, adversely. He has worked as an appraiser since 1981. He has an undergraduate degree in real estate and finance, and a master's degree in real estate equity analysis and appraisal from UW-Madison. He started his own appraisal company in 1993. He holds the MAI designation. Nicholson testified that he provided a base calculation for reproduction and

replacement costs on the Property for tax year 2016. He did not calculate a market value, land value, or depreciation.

On April 14, 2016, Nicholson calculated the reproduction cost of the Property in 2016 to be $40 million using MVS. To calculate the reproduction cost, Nicholson analyzed actual costs from the Nordstrom project budget, and he used Nordstrom's personal property tax return for 2016 to separate real from personal property. He only communicated with the City Assessor about the Property. Nicholson did not remove the capitalized interest because that is a generally accepted cost of construction of real property. Nicholson explained that when appraising for reproduction cost, the appraiser must consider superadequacies or deficiencies in the property.

Nicholson testified he performed a replacement cost analysis on the Property upon Krause's request on May 3, 2016. He did not receive any additional information from Krause before he performed the replacement cost. He did not charge for this calculation because he had performed the necessary calculations during his reproduction costs analysis. Nicholson initially considered the Property to be a Class C department store. Nicholson calculated the replacement cost to be $27.3 million.

Nicholson testified that there are two ways to do replacement cost in MVS: the unit cost (or segregated cost) method or the calculator method. He testified that when the calculator method is used to appraise a special purpose property, the superadequacies and the special features are excluded. Replacement cost values in the MVS are set as typical or generic; therefore, there is no need to deduct for superadequacies or functional obsolescence.

Nicholson testified that a special purpose property exists when the use of the property is special purpose in nature. A limited market property looks at the use of the property, not the user of the property. A property could be a limited market property because there are not very many of them, there is a small set of potential buyers, and there are not many sales. Nicholson testified that a regional department store mall is a thin market, and the high end department store market segment is very thin.

Nicholson testified that he adjusted his calculations in February 2017 after he saw the actual costs reported in Bakken's report. He changed his assessment of the construction quality of Nordstrom, from class C to class A. He determined the Property was a Class A department store, which is a building of individual design. He submitted an amended report, setting the reproduction cost to $38.1 million and the replacement cost to $30 million.

Expert Witness: William Miller

The City called expert witness William Miller to testify about his appraisal of the Property as well as his review of Bakken's reports. At the time Miller made his reports, he was a managing director at a regional appraising firm based out of Chicago. Miller has been working in the property appraisal business since 1976. He was certified as an assessor in the state of Wisconsin for a time. He is currently a Certified

General Appraiser in the state of Wisconsin. He is an associate member of the Appraisal Institute. Miller does not have an undergraduate degree, does not have an MAI, and has never appraised a regional mall except for Mayfair.

Miller established his experience as an appraiser for retail properties in Wisconsin and the City in particular. He was familiar with the market conditions for retail property in the City of Wauwatosa for the years at issue. When he appraises a property, he looks at the local and national economic marketplace as well as the economic information available to the public for that company. He also researched competitor department stores and mall operators. Miller submitted a separate analysis for 2015 and 2016.

Miller concluded the highest and best use of the Property was "as is," which is a high-end luxury department store.

Miller testified that the judgment of the appraiser to determine the highest and best use is the fulcrum of the appraisal, it sets the framework for the remaining analysis. When he applied the WPAM analysis factors to the Property, Miller concluded that the highest and best use was "as is," as a high-end, luxury department store. (WPAM 7-7, 8.) Miller testified that the Property's highest and best use as a high-end department store is complementary and in balance with the surrounding property. Miller concluded Mayfair Mall was a Class A mall and a regional or super regional mall.

Miller testified that the market segmentation is a generally accepted appraisal concept under the Fourteenth Edition. Miller testified that there was weakness in the lower end of the retail department store market; however, he saw building strength in the high end marketplace. He believed that high-end stores are a narrow and focused market within the set of retail stores.

Miller evaluated the land value and adopted the City Assessor's land value.

Miller testified that he determined a land value for the Property, but he adopted the land value determination made by the City Assessor because one of his considerations was uniformity. Miller formed his opinion of land value based on two sets of market data: big box retail stores and land sales for development of high-end department stores. While the big box stores were similar sizes to Nordstrom, the land parcels were much larger. He believed the Nordstrom property was more valuable because the highest and best use of the property is a more valuable use than some of the other properties. Although Miller saw support for a higher land value, he accepted the City Assessor's $2 million land value, with equates to $26.75 per square foot.

Miller concluded the data did not support a Tier 2 sales comparisons analysis.

Miller concluded that a Tier 2 sales comparison analysis was not appropriate. He looked at the factors in the WPAM to determine comparable sales and determined there were no sufficient comparison sales because of age, condition, use, type of construction, location within a retail development, and physical features. (WPAM 7-24.) An appraiser should look for comparable stores being used in their highest and

best use, not vacant, distressed, and stores in transition. He found there were material differences between the Property and any suggested comparable sales; therefore, they were too dissimilar to be a reliable indicator of market value.

Miller failed to find any reasonable comparable sales of high end luxury department stores throughout the country. Miller rejected several suggested comparisons sales as not reasonably comparable including: the conversion from a Nordstrom to a Von Maur in Georgia; the Sears redevelopment in Brookfield; the conversion of a Nordstrom at Ala Moana (Hawaii) to a Target; and the conversion of a Belk to a Von Maur at North Point mall. He considered them not comparable because of age and the investment to convert the buildings into new stores.

Miller concluded that the market value of the Property under a Tier 3 cost approach analysis was $40.2 million.

Miller testified that he evaluated the Property under Tier 3 cost approach and income approach; the income or cost approach is appropriate for larger retail venues without comparable sales. (WPAM 9-7.) He performed both reproduction cost analysis using actual costs and replacement cost analysis using the MVS. His overall market value of the property via the cost approach was $40,240,000.

One of the major difference between Bakken and Miller's appraisals was how they accounted for the value of branding items in the market value of the Property. Miller did not agree with Bakken's decision to deduct branding elements to convert the Property's "value in use" to the "value in exchange." Miller stated his objective was to find the market value of the Property, not the value in use, in compliance with Wisconsin law.

Miller's cost approach analysis found no depreciation or obsolescence in the Property.

Miller determined that the reproduction cost and replacement cost were synonymous because the Property was newly built. Miller found there was no physical depreciation because of the age and condition of the property. He found there was no functional obsolescence in the property because it was constructed to current design standards. He reviewed the conditions of the marketplace and found no indications of external obsolescence.

Miller did not see external factors that indicated economic obsolescence. (WPAM 7-34.) He concluded that the $12.5 million payment should not be a deduction for economic obsolescence in the reproduction cost analysis because the payment was internal to the overall agreement to open the store. He found multiple covenants within the Separate Agreement that supported his opinion that the store was constructed for a mutually beneficial purpose with GGP.

Miller determined there was no functional obsolescence to deduct. Miller concluded that the features Bakken determined were superadequacies—the exterior veneer wall, electrical and lighting, ceilings, and HVAC—were not superadequacies and did not constitute functional obsolescence in the

Property. He stated that the concrete panels on the white exterior veneer wall were attractive and a new design; he found nothing that was valuable only for Nordstrom. Miller testified that to the extent that Nordstrom spent money on HVAC, electrical and lighting, and ceiling over and above the costs contemplated in the MVS, Miller added those costs to the MVS base replacement cost calculation. Where Bakken subtracted approximately $4.4 million from the project costs for these features as functional obsolescence, Miller added approximately $4.1 million to the costs for the same features.

Miller concluded the reproduction cost approach and the replacement cost approach were about equal.

Miller conducted an actual cost estimate and a replacement cost estimate using MVS, with actual cost estimate serving as the reproduction cost estimate. He calculated an actual reproduction cost of $38,217,119 and a MVS replacement cost estimate of $38,242,389, which were about equal. Miller testified that he included all of the actual construction costs in the actual cost calculation, except for personal property and potential personal property. Miller looked at Nordstrom's personal property tax return for 2016 to determine what personal property should be removed from the actual costs of construction. He excluded approximately $1.2 million as possibly tenant specific items that may encompass branding, but were not personal property. Miller found it appropriate to exclude the tenant specific branding from the valuation. Miller contrasted his replacement cost calculation using MVS ($38.2 million) with Bakken's determination ($34.5 million). He explained that his estimate was about 10% higher because MVS provides a median number, but he reasonably considered the Property to be at the upper end of the range.

Miller's income approach analysis set the market value at $40.6 million.

Miller testified that his income approach valuation supported his overall market value determination. He explained that for an owner-operated property, there is no lease test against, but the appraiser looks to the marketplace to check the value using the income approach. Under the income approach, Miller concluded the market value was $40,620,000, compared with cost approach market value at $40,240,000. His market values included the land value estimate of $2,026,000.

Miller looked at big box retail stores and Wauwatosa specific stores in his income approach analysis. Miller identified nine properties he considered potentially comparable. He concentrated on the Mayfair Collection in Wauwatosa because those buildings were newly renovated retail spaces. Miller did consider the Macy's at Mayfair or the Macy's at Southridge to be reasonably comparable because the properties were older and had complex incentives in their rental rates.

Miller concluded market rent was $18 per square foot net, meaning the tenant pays all expenses; he had no evidence of another anchor department store in Wisconsin renting at that price. Miller determined that the appropriate capitalization rate for the Property is 6.5%. He used bracketing in the form of qualitative

analysis, consistent with the WPAM. He considered Nordstrom to be superior because of the location, the design of the store, and its physical features.

Miller's 2015 report appraised the market value at $12.2 million.

Miller also appraised the market value of the Property as of January 1, 2015. Miller stated that his 2015 report was based on the cost approach for the partially completed property. He relied on the costs reported by Nordstrom on December 14, 2014. He considered construction costs to be a reasonable basis for the cost approach analysis. He concluded it was inappropriate to deduct for functional, physical, or economic obsolescence. He concluded the replacement costs were $10,272,300 and $2,026,000 for the land for a market value of $12,298,300. Miller testified his analysis is consistent with the WPAM. Miller concluded a sale comparison was not appropriate or applicable because it was a partially constructed property. Miller concluded that that Bakken appraisal for 2015 was misleading and unreliable.

Miller's appraisal review concluded Bakken's reports were unreliable.

Miller did an appraisal review of Bakken's report, which means he reviewed Bakken's report and work file. He determined that Bakken's appraisal focused on sales comparisons, which Miller believed did not conform to the WPAM. Miller thought it was inappropriate for Bakken to deduct $12.5 million for economic obsolescence. He did not see an analysis by Bakken of the value of the private restrictions on the Property. He concluded that that the Bakken's appraisal was not reasonable, credible or reliable.

Expert Witness: Thomas Hamilton

The City called Dr. Thomas Hamilton as an expert witness. Hamilton is a professor of real estate at the Chicago School of Real Estate. He teaches at the graduate level and teaches the topics an appraiser would need to understand to conduct appraisals. Hamilton holds the MAI and CCIM designations. He is not an appraiser licensed in Wisconsin. Hamilton stated that that his specialization is appraisal review; he does not perform initial appraisals of property. Hamilton has been engaged to be a consultant on tax related litigation for the City of Wauwatosa since 2013. Hamilton testified that he has formulated no independent values for the Property and he did not review the City's assessment.

Hamilton testified that the value of real estate is not the land itself, but the rights and privileges appertaining to the land. Hamilton testified that the value in use of the Property could be the market value assuming its use as a high-end or luxury department store. Hamilton noted that Bakken's report determined the highest and best use of the Property was "as is." He noted that "as is" would set the highest and best use of the Property as a high-end, luxury department store, or upscale retail. He believed that Bakken misstated the concept when he separated "value in exchange" and "value in use," because when a property is being used in its highest and best use, then, "value in exchange" is equal to "value in use," which in turn is equal to market value and use value. Hamilton stated than having too narrow of a highest and best use is impermissible under Wisconsin law.

He testified that Bakken was wrong to imply that value in use is the specific use of the Property by Nordstrom because "value in use" is the value of the property for a specific use, not to a specific user, under the WPAM. (WPAM 7-8.) Hamilton testified that Bakken incorrectly applied value in exchange throughout his appraisal. He testified that finding the value in exchange does not require the exclusion of any participant in the exchange process. He stated that Bakken limited his value in exchange analysis with the phrase "other than the current user," which Hamilton stated was incorrect. He concluded that Bakken's restriction limited the scope of the appraisal and biased Bakken's report.

He believed that Bakken artificially and explicitly forced the appraisal development process away from the report's concluded highest and best use. Hamilton disagreed with Bakken's assessment that Nordstrom's branding elements were only of value to Nordstrom's value in use, and therefore of no value in the marketplace. Hamilton testified that the branding elements may be specific to a high-end department store, but those elements are similar enough that there would be some value in the marketplace.

Hamilton testified that an appraiser conducting a retail property valuation must look at the retail marketplace. Hamilton explained that the forces of supply and demand affect the market and value of property; the fact that a property is occupied is evidence of a market existing. Hamilton explained that a limited market property is a property within a relatively limited supply of property and a limited demand group, a subset of the overall market. Hamilton stated he did not believe Nordstrom was a special purpose property, because he believes there was a market for the property because there is a current occupant.

Hamilton explained that the definition of market value in WPAM specifically required two factors: (1) the buyer and seller are typically motivated, and (2) both parties must be well-informed or well-advised and acting in what they consider their own best interests. (WPAM 7-7.) For a market transaction to have market value, it must meet the conditions. If it does not, it is a non market transaction. If the appraiser assumed that the buyers in the market are not willing to pay the full price of the property but only creating a market at a lower price, then the developer would need to compromise its own self-interest (profit motive) to earn a lesser profit or even a loss. Then the sale would be considered a nonmarket sale.

Hamilton concluded that Bakken's Tier 2 sales comparison analysis was not reliable.

Hamilton concluded that Bakken's Tier 2 analysis did not yield indications of the market value of the Property. Under the WPAM and Wisconsin law, an appraiser should only employ those approaches to value for which there is adequate data to develop an opinion of value. (WPAM 7-24.) Reviewing Bakken's report, HaHamilton did not think Bakken's conclusions about the Portland and San Diego Nordstrom stores were supported by the data. Hamilton testified that Bakken's qualitative analysis required bracketing: finding inferior and superior values to determine market value. Bakken found ranges from $15 per square foot to $67 per square foot, but Bakken's conclusion was $100 per square foot value for the Property, which was beyond the extremes in the bracket.

Hamilton concluded that Bakken's obsolescence deductions were not supported by the evidence.

Hamilton disagreed with some assumptions and explanations in Bakken's report. He explained that functional obsolescence is internal and economic obsolescence is external. Hamilton testified that replacement and reproduction costs should be the same for a brand new building in its highest and best use.

Hamilton testified that the WPAM requires assessors to conduct research, particularly in dealing with commercial properties, to determine the appropriate level of functional obsolescence. (WPAM 7-34.) It would be a rarity to have functional obsolescence in the replacement cost for a brand new building. Hamilton explained that using MVS replacement costs formulas, branding costs for any specific type of industry are excluded from the calculation. He explained that when MVS replacement cost category includes an excellent finish, it would be generic.

Further, a partially built property cannot have functional obsolescence because if there are changes in tastes or preferences in the market, those changes could be incorporated in the construction. He stated that Bakken used an incorrect process when he found superadequacies in the Property and deducted those costs from the market value. Hamilton found Bakken's conversion from value in use to value in exchange for branding elements was incorrect. Any element that would be typical in the highest and best use with equal utility should not be deducted. Further, Hamilton stated that capitalized interest should not be deducted because it is a normal and ordinary construction expense.

Hamilton testified that restrictions on property affect value. Deed restrictions may diminish value, but bilateral agreements usually enhance for the benefit of both parties. Hamilton reviewed the Separate Agreement between GGP and Nordstrom. He offered the opinion that while Nordstrom got a cash payment, GGP got a requirement that Nordstrom operate a high-end, luxury department store at its mall for 15 years. Hamilton believed that this was a mutually beneficial relationship.

Hamilton testified that the $12.5 million payment from GGP to Nordstrom was a capital contribution, which means it is internal to the Property for valuation purposes. Hamilton concluded that Bakken relied on irrelevant data that showed downward market trends that did not reflect the market affecting the highest and best use of the Property. Accordingly, Bakken's economic obsolescence analysis was not supported. Hamilton criticized Bakken for treating the $12.5 million payment as economic obsolescence, but not accounting for the $10 sale of the land from GGP to Nordstrom, which was less than the value of the land.

Hamilton testified he disagreed with Bakken's analysis of mall subsidies to anchor stores under the substitution theory because Bakken merged TIF funding and capital contributions. Hamilton explained that TIFs are external and capital contributions are internal, stemming from agreement with mutual benefit. Hamilton testified that the $12.5 million payment was fungible and to Nordstrom's benefit. Hamilton

offered an example that if a person buys a lake house for $1 million, if someone gives you $700,000 toward the purchase, the property is not worth $300,000, it is still worth $1 million.

Hamilton concluded Bakken's reconciliation of value was unreliable.

Hamilton reviewed Bakken's reconciliation of market value and concluded it was unreliable and not credible. He disagreed with Bakken's final estimate $14.5 million, with a low of $14 million on the income approach and a high of $16 million on the cost approach. Hamilton criticized Bakken's reports for making adjustments without supporting how those deductions were calculated or derived. In his review of Bakken's 2015 report, he concluded Bakken's cost approach final conclusion is not reliable because Bakken deducted 60% of the value for economic obsolescence without explaining how the deduction was calculated or derived. In his review of Bakken's 2016 report, Hamilton testified that Bakken's deductions for functional and economic obsolescence have the result that only 42% of the costs of a brand-new building constitute market value. Further, Hamilton testified that Bakken makes a 35% location adjustment without any market support or analysis in his income approach. He concluded that Bakken's report cannot properly or accurately opine to the market value of Property as required under Wisconsin law.

ANALYSIS

Nordstrom claims that the City imposed an excessive assessment on the Property for the 2015 and 2016 tax years. Because the challenge to tax year 2015 and tax year 2016 were consolidated into a single action, the Court addresses the arguments pertaining to both years as a general statement and addresses the individual years as necessary. "The question on appeal in a Wis. Stat. § 74.37 action is not whether the initial assessment was incorrect, but whether it was excessive." *Metro. Assocs. v. City of Milwaukee*, 2018 WI 4, ¶ 40, 379 Wis. 2d 141, 905 N.W.2d 784. The Court "must give presumptive weight to the City's assessment." *Adams Outdoor*, 2006 WI 104, ¶ 25; Wis. Stat. § 70.49(2). "The presumption of correctness does not apply" if the taxpayer "presents significant contrary evidence or shows that the assessment does not apply the principles" in the WPAM and Wisconsin law. *Bonstores*, 2013 WI App 131, ¶ 5 (internal citations omitted). Nordstrom argues that the Court should set aside both assessments as excessive because the City failed to comply with the WPAM and Wisconsin law and Nordstrom offered significant contrary evidence that rebutted the presumption of correctness for the assessments. The Court is unpersuaded by Nordstrom's arguments and finds that Nordstrom has failed to prove that the assessed value is excessive. Therefore, the Court sustains the City's assessed values for the Property for tax years 2015 and 2016.

I. The assessed values were made in compliance with the WPAM and Wisconsin law.

The Court finds that the City Assessor set the assessed value of the Property for tax years 2015 and 2016 in compliance with the WPAM and Wisconsin law. First, the Court finds that Nordstrom did not develop its uniformity claim; therefore, the challenge is ineffective. Second, the Court finds that the City's

assessment process was in compliance with Wisconsin law with respect to highest and best use, mass appraisal, and the application of Tier 2 and Tier 3 valuation approaches. Third, the Court finds that Nordstrom failed to provide significant contrary evidence of excessive assessments through its theories on value and obsolescence. Fourth, the Court finds that the City's failure to follow the expert assistance help statute does not render the assessments invalid.

A. Nordstrom did not develop its uniformity challenge.

Nordstrom briefly raised a uniformity challenge to the assessment by comparing the Property to the Boston Store at Mayfair Mall. Nordstrom's expert report also compared the fair market value of the property to the other two anchor department stores at Mayfair Mall. However, Bakken did not offer testimony to support a uniformity challenge. Nordstrom did not further develop this argument at trial or in briefing. The Court finds no evidence that would support a uniformity challenge. *See Noah's Ark Family Park v. Board of Review of Village of Lake Delton*, 216 Wis. 2d 387, 388–89, 573 N.W.2d 852 (1998); *State ex rel. Levine v. Board of Review of Village of Fox Point*, 191 Wis. 2d 363, 373–74, 528 N.W.2d 424 (1995).

B. The City's assessment methodology complied with the WPAM.

Nordstrom claims that the City's assessments for 2015 and 2016 do not conform with the WPAM and Wisconsin law because the City's highest and best use determination was too narrow. It argues that the appraisal process should have a broader highest and best use. It further argues that the City failed to apply mass appraisal correctly, the City should have performed a Tier 2 sales comparison, and the City's Tier 3 analysis was unreliable. The Court is not persuaded by Nordstrom's arguments and finds that the City's assessments are compliant with the WPAM and Wisconsin law.

i. The determination of highest and best use is not dispositive to the issue of excessive assessment of the Property.

Although Nordstrom disputes the City's highest and best use determination, their difference in opinion is not dispositive of the issue of whether the Property was excessive assessed. The City posited that the Property's highest and best use is as a high-end, luxury anchor department store. Nordstrom asserts that the highest and best use is an anchor department store and that the City's determination is impermissibly narrow because it reflects the value of the Property to Nordstrom and not the market value of the Property. *See Walgreen*, 2008 WI 80, ¶ 64. If the highest and best use sets the tone for the appraisal, all of the experts considered the Property's characteristics in substantially similar ways. A highest and best use on a continuation of the current use is legally sufficient because it shows there is a market for the property. *See Nestle*, 2011 WI 4, ¶ 45. The Court finds that Nordstrom has not shown that the City's highest and best use determination was unreasonable or made out of compliance with the WPAM and Wisconsin law.

Experts from both parties testified that Mayfair Mall was in a higher tier of malls in the Milwaukee metropolitan area, the state of Wisconsin, and nationally. Bakken, Miller, and Nicholson considered the Property to be a Class A department store with an Excellent finish type, category 318 in the MVS, the most expensive category for a mall anchor department store. The Court found Miller's testimony that the highest and best use was "as is," as a high-end, luxury department store to be credible. Bakken also considered the highest and best use of the property to be "as is" in a continuation in retail. The Court noted that Bakken considered the Property to be in the best retail area in the state. The Court did not find credible Corteau's testimony that Nordstrom's competitors were the entire universe of anchor department store over 100,000 square feet. The term "luxury" is not a term of art in the WPAM; the City's use of the word luxury did not change the characterization of the Property's elements.

Nordstrom's difference in appraised value of the Property came not from the highest and best use determination, but from Nordstrom's theories of depreciation, functional obsolescence, and economic obsolescence. The City assessed the market value of the Property at $29.9 million for 2016; that included $2 million for the land value. The Court concludes that the base cost of the appraisal shows a value of around $30 million; Bakken starting at $30.9 million and Miller started at $29.9 million. Nicholson, under slightly different parameters, started at $30.9 million.[5] From that point, Bakken finds obsolescence and depreciation in the Property that lower the market value of the Property. In contrast, Miller finds improvements that increase the market value. Although Bakken and Miller's final market values appear far apart, the Court notes that the appraisals started from substantially similar characterizations of the Property.

The Court is not persuaded by Nordstrom's argument that defining the highest and best use of the Property to a luxury, high-end department store instead of a mall anchor department store affected the validity of the assessment under Wisconsin law. The Court is not persuaded that the City's highest and best use determination was dependent on finding the Property to be a limited market or special purpose property. Nordstrom has failed to prove that the labeling differences in each appraiser's highest and best use determination affected the appraisal in a material way. Nor is the Court persuaded that labeling differences were material to the legal question of whether the assessments are excessive. Although highest and best use is the threshold premise of an appraisal, both Nordstrom and the City start from the same position.

[5] The Court noted a strong similarity in the initial replacement cost calculation. Bakken's adjusted MVS replacement cost was $30.9 million. With additional soft costs and site improvement, Bakken determined the replacement cost to be $34,552,000. Miller's adjusted base cost was $29.9 million. With additions for specific features Miller believed added value, he determined the adjusted cost was $34.5 million. With site preparation, soft costs, architectural and design fees, Miller determined the replacement cost was $38,242,389. Nicholson provided only a base calculation to the City Assessor. Nicholson's revised report determined the replacement cost was $30,928,000, including building and site improvements.

Nordstrom has failed to present sufficient evidence to convince the Court that the City's determination of highest and best use of the Property was not credible or that the use of the term "luxury" was material to the determination of excessive assessment.

ii. Nordstrom has failed to prove that the City did not employ mass appraisal in compliance with the WPAM.

Nordstrom argues that the City failed to use mass appraisal techniques on the Property in setting the assessments for tax years 2015 and 2016. In response, the City argues that the City Assessor complied with the WPAM and Wisconsin law in its use of mass appraisal and single property appraisal techniques. Under the WPAM, "commercial property can be valued by either single property or mass appraisal techniques." (WPAM 9-7.) Improvements and land value are listed separately on the assessment roll and the assessor must determine both values. (WPAM 9-7.)

When the City Assessor valued the land under the Property, she formulated the value using mass appraisal techniques in accordance with the WPAM, specifically relying upon the 2013 reevaluation of all parcels in the City. The City Assessor determined the value of the improvements using a Tier 3 cost approach. The Court finds that Krause's application of the cost approach to value newly constructed commercial property is in compliance with the WPAM and is credible. The Court finds that the City appropriately relied on mass appraisal for the land value and the cost approach for the improvements in compliance with the WPAM.

The City Assessor also complied with Wisconsin law by determining the fair market value of the Property "from the best information that the assessor can practicably obtain . . ." Wis. Stat. § 70.32(1). Nordstrom appears to object to the use of non-mass appraisal techniques to set the value of the improvements; however, they do not develop this argument. The Court notes that cities have been criticized for using mass appraisal instead of single property appraisal because that failed to use the best information available. *See Regency W. Apartments LLC v. City of Racine*, 2016 WI 99, ¶ 40, 372 Wis. 2d 282, 303, 888 N.W.2d 611, 621. Here, the Court holds that the City properly employed single property appraisal from the best information it could obtain for the assessment of the improvements of the newly constructed building.

iii. Nordstrom's Tier 2 sales comparisons are not credible or reliable.

Bakken was the only expert to argue that a Tier 2 analysis is applicable. Although an appraiser can adjust property characteristics to develop a comparable sale, the comparison must be reasonable. The Court does not find Bakken's sales comparison approach to be persuasive because the sales comparison properties he found were not reasonable comparisons. Bakken's analysis relied on bracketing; however, he only analyzed properties with lower values than the Property. Bakken did not sufficiently explain how he adjusted the value upward. The Court finds Hamilton to be credible in his testimony that Bakken's Nordstrom store comparisons were not supported by evidence. Further, the Court excluded testimony about

three mall anchor department stores Bakken identified as reasonable comparisons because Bakken admitted in his report that they would not yield an indication of value for the Property. Likewise, the Court is unpersuaded by Bakken's testimony in support of the Tier 2 sales comparisons because he did not explain the reasoning or calculation of his adjustments he made to find market value. Therefore, the Court finds that a Tier 2 sales comparison analysis would not be based on the best available evidence and cannot be used to determine the fair market value of the Property.

Furthermore, Nordstrom has failed to convince the Court that a broader highest and best use would have made a Tier 2 sales comparison analysis the appropriate choice. "If there had been any reasonably comparable sales available, but despite such availability the [City] instead relied on a third-tier assessment method, the assessments would be invalid." *Nestle*, 2011 WI 4, ¶ 31. Bakken's proposed comparable sales were not reasonable comparisons for an anchor department store similar to the Property. The WPAM directs that the more similar the property, the more reliable it is as an indication of market value. (WPAM 7-24.) The Court concludes that the proposed sales comparisons were not sufficiently similar to be considered reasonable comparisons for the purpose of a Tier 2 analysis; therefore, a tier 3 analysis is valid.

iv. The City's Tier 3 cost approach is more credible than Nordstrom's Tier 3 estimates.

Bakken, Miller, and Krause each employed a tier 3 analysis to value the Property using the cost approach and the income approach. The City Assessor relied upon the cost approach to set the assessed value in 2015 and 2016. Bakken and Miller each relied on the cost approach to calculate the market value of the Property. Although Bakken and Miller each checked their valuation using the income approach, this analysis was secondary.

The City Assessor considered the cost approach to be appropriate under the WPAM because the Property was a new structure with limited sales or rental data activity. (WPAM 7-24.) Although Krause concluded that there was a limited market for high-end anchor department stores in Wisconsin, her determination was not material to the Tier 3 analysis based on the cost approach. The Court does not need to decide if the Property was a limited market or special purpose property to find that the assessment was not excessive.

The Court finds that the City's approach to the 2016 assessment was reliable and credible. The City Assessor employed a replacement cost calculation based on a generic finish and general anchor store characteristics to satisfy the complaint that Nordstrom's branding was being overvalued. The City Assessor also considered the issues of depreciation and obsolescence and made no deductions. The Court finds that the City Assessor's reasoning is credible: she did not deduct physical depreciation because the building was new; she did not deduct functional obsolescence because a replacement costs analysis eliminates this factor; and she did not deduct economic obsolescence because she did not see the external factors defined in the

WPAM present. The City Assessor did not subtract costs for Nordstrom's branding elements because she believed the Property had very high quality fixtures that were not specific or useful only to Nordstrom. The Court finds that the City's 2016 assessment is more credible than either Bakken or Miller's assessments.

In the 2015 tax year, the Property was only partially constructed. The sales comparison approach is not appropriate because there are no sales of partially completed structures. The Court found the City's position that the cost approach is the only valuation method that makes sense for the 2015 tax year to be credible. The City Assessor relied upon the best information that she could practicably obtain and complied with the WPAM and Wis. Stat. § 70.32. Bakken and Miller also employed the cost approach to appraise the Property in 2015. The City's cost approach valuation for 2015 was more credible than Bakken's appraisal proffered by Nordstrom as evidence of an excessive assessment.

The parties spent considerable time arguing over the Tier 3 income approach analysis; however, the income approach was only performed by all experts as a check on the cost approach market value. The Court finds Bakken's position to be less credible than the City's, but does not consider the values established by any of the income approach analyses to be dispositive of the issue of whether the assessments were excessive. The Court finds Bakken did not rely on the WPAM when he offered opinions on factors necessary to compare leased fee to fee simple.

The Court finds that although Bakken presented an alternative analysis of the Tier 3 valuations, Nordstrom has not showed that its analysis is more credible or more reasonable that the City's. Further, Bakken's cost approach analysis contains obsolescence deductions that are not supported in the WPAM. The Court finds that the City's cost approach analysis is more reliable that Nordstrom's sales comparison approach, cost approach, or income approach. Therefore, Nordstrom's Tier 3 approach does not constitute significant contrary evidence.

C. Nordstrom does not provide significant contrary evidence that the assessment was excessive with its theories to deduct costs from the market value.

Nordstrom has not provided significant contrary evidence that the assessments was excessive. Nordstrom argues that the assessments in tax years 2015 and 2016 were excessive because the City failed to properly deduct three costs which Nordstrom asserted reduced market value. First, Nordstrom argues that the cost of branding elements should be deducted because those items only have value to Nordstrom and not on the open market. Nordstrom asserts those elements would be included in the "value in use" but not the "value in exchange." Second, Nordstrom argues that the Property has four superadequacies that constitutes a deduction for functional obsolescence because they were less valuable than the costs expended. Third, Nordstrom argues that the Property suffered from economic obsolescence because the economic trends facing mall anchor department stores.

i. Nordstrom's deductions for value in use elements are not supported by the WPAM.

Nordstrom argues that the cost of branding elements should be deducted because those items only have value to Nordstrom. The branding elements do not refer to signage or materials with Nordstrom's name or logo; it refers to the fixtures and elements that Nordstrom specifically chose for its store style and company aesthetic. In order to convert from the value in use by Nordstrom to the value in exchange on the market, Bakken deducted $6.5 million for branding elements. The Court finds that Bakken did not rely on the WPAM in this conversion. The Court found Miller's testimony on this issue to be credible that the value in use was the value the property has for a specific use, not a specific user, under the WPAM. Therefore, the framework of the Court's analysis is not what value the Property has only to Nordstrom, but what value it might have for a use that does not match its highest and best use. Under that question, there is no support to deduct the branding elements.

Nordstrom has not proven that the branding elements were only of intrinsic value, which would not be included in market value. *See Northwestern*, 177 Wis. at 448. The Court finds Hamilton's testimony regarding branding elements to be credible. Hamilton testified that the elements may be specific to a high-end department store, the elements themselves have some value in the marketplace because they are similar to the elements chosen by other retailers. The Court was not shown credible evidence that Nordstrom set out to build an obsolete building or was not participating in a market transaction.

Moreover, Bakken's explanation of what remained in a cost category after deducting the branding element was contradictory. He claimed that he only deducted the additional value from the branding and not the entire cost of that element, because the value of the building would include something for those branding elements. However, he also referred to subtracting the entire cost in his estimates on items like floor and wall coverings within the branding elements. The Court was not persuaded by Bakken's deduction for branding elements was proper as a consideration for the Property's market value.

ii. Nordstrom's deductions for functional obsolescence are not credible or reliable.

Bakken determined that functional obsolescence was present in the Property on the day it was built. The Court finds credible Hamilton's testimony that it would be rare to have functional obsolescence in the replacement cost for a brand new building. The Court was not persuaded by Bakken's position that time was not a factor in functional obsolescence. The Court noted that Bakken relied on the Fourteenth Edition instead of the WPAM for his functional obsolescence analysis.

Nordstrom argued that the Property contained four superadequacies that provide less value than the costs expended. Bakken deducted the costs of these superadequacies, which amounted to approximately $4.4 million specifically for upgraded elements of the exterior veneer wall, ceilings, electrical and lighting, and the HVAC system. In the WPAM, superadequacies are an issue of functional obsolescence through

excessive utility. However, this is typically only an issue in a reproduction cost approach, not a replacement cost approach. (WPAM 7-30.) The City Assessor revised the assessment to use a replacement cost analysis to alleviate concerns about overvalued features. The Court finds that the City Assessor's decision not to deduct functional obsolescence in the assessed market value was reasonable.

Nordstrom failed to prove that the Property's superadequacy features provided excessive utility such that a deduction for functional obsolescence was appropriate. Further, Nordstrom failed to rebut the City's argument that assessed value was based on a replacement cost analysis that eliminated functional obsolescence in accordance with the WPAM.

iii. Nordstrom's deductions for economic obsolescence do not comply with the WPAM.

Nordstrom argues that the Property suffered from economic obsolescence that had to be deducted in a cost approach analysis. Bakken concluded that the $12.5 million payment from GGP to Nordstrom was a subsidy that GGP needed to make in order to get Nordstrom to open a brick and mortar store in the City. After a review of the retail marketplace, Bakken determined that the Property's value was impaired. The Court was not persuaded by Bakken's analysis and instead found more credible the positions taken by Krause and Miller—that the marketplace under these conditions was not suffering from economic obsolescence. The Court finds that Bakken's economic obsolescence deductions were not supported for two reasons: (1) he could not sufficiently explain how he calculated the deduction, and (2) the payment would not be a deduction under the WPAM because it was not external to the Property.

Bakken deducted $12.5 million from the actual costs for economic obsolescence and explained that it was a 47% deduction; however, the Court finds that he failed to adequately explain how or why that was the appropriate calculation. Bakken acknowledged that there is no support in the WPAM for calculating economic obsolescence by deducting a subsidy from the costs. Despite the fact that Bakken deducted as economic obsolescence the exact amount of the $12.5 million payment, Bakken disputed that the subsidy was the entire rationale behind the calculation of economic obsolescence. Bakken stated that he made the same 47% deduction in his appraisal of the Macy's at Southridge; nevertheless, Bakken did not explain how those percentages were calculated.

For the 2015 tax year, Bakken increased the economic obsolescence in the Property to 60% from the 47% he found in his 2016 report. Bakken stated that he increased the deduction because the Property was only partially completed; however, again, the Nordstrom has not provided sufficient evidence to support this calculation. Bakken also admitted that no Wisconsin court has accepted his conclusion that a new property was 60% obsolete at the time of construction in his previous appraisals.

The calculation of economic obsolescence deals with external factors to the Property, not the internal structure or the business value of property. Hamilton explained that the $12.5 million payment was

internal to the Property's value. It was a capital contribution made as part of a larger economic transaction in the Separate Agreement between GGP and Nordstrom. The Court concludes that the practice of considering the capital contribution in isolation without considering the covenants in the Separate Agreement or the sale of the land at a vastly reduced price does not comply with the WPAM or Wisconsin law.

In Miller's analysis of the $12.5 million payment, he found no economic obsolescence because the payment was part of the transaction between GGP and Nordstrom. He concluded that the parties to the Separate Agreement were typically motivated, that they were well informed and well advised, and that the construction of the Property was for a mutually beneficial purpose. Miller credibly supported the foundation of his opinions to the Court's satisfaction.

The Court was satisfied that Bakken performed appropriate research and had a foundation for his opinions about weakness in the retail segment; however, he did not address the $12.5 million payment as an internal capital contribution raised by Hamilton, the mutual benefits of the Separate Agreement raised by Miller, or the economic conditions in Wauwatosa that Krause relied upon. The Court finds that Nordstrom has failed to show that economic obsolescence was present in the Property. Accordingly, Nordstrom has not provided significant contrary evidence that the assessment was excessive.

D. The City's violation of the Wis. Stat. § 70.055 did not impair the substantial justice of the assessment; therefore, the assessment remains valid.

Nordstrom argues that in the 2016 assessment of the Property, the City failed to comply with Wisconsin law when the City Assessor relied on expert assessment help without authorization by the Wauwatosa city government, per Wis. Stat. § 70.055. The City argues that Wis. Stat. § 70.055 applies only to a municipal government hiring a person or a company to perform the assessment and sign the assessment roll. Wisconsin Statutes chapter 70 sets forth that "[t]he assessment of general property for taxation in all the towns, cities and villages of this state shall be made according to this chapter unless otherwise specifically provided." Wis. Stat. § 70.05. When expert assessment assistance is required, Wis. Stat. § 70.055 sets forth the requirements:

> If the governing body of any town, village or city . . . determines that it is in the public interest to employ expert help to aid in making an assessment in order that the assessment may be equitably made in compliance with law, the governing body may employ such necessary help from persons currently certified by the department of revenue as expert appraisers.

Wis. Stat. § 70.055(1). Here, the City Assessor hired Nicholson to assist her office with base calculations to find the market value of the Property for tax year 2016. Neither the City Assessor nor Nicholson claim that the Wauwatosa City Council made the decision to employ Nicholson for expert assistance.

The Court must interpret § 70.055 to determine the application of the statute here. "The purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and

intended effect." *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. The plain language grants the governing body the authority to hire expert assistance, not the City Assessor. If this power is delegable, no law or evidence has been presented to the Court in support of that position. Although there are no direct challenges to this statute, communities complied with the statute when employing expert assistance. See *State ex rel. Hippler v. City of Baraboo*, 47 Wis. 2d 603, 178 N.W.2d 1 (1970); *State ex rel. Baker Mfg. Co. v. City of Evansville*, 261 Wis. 599, 53 N.W.2d 795 (1952); *New Lisbon State Bank v. City of New Lisbon*, 260 Wis. 607, 51 N.W.2d 509 (1952); *State ex rel. Garton Toy Co. v. Town of Mosel*, 32 Wis. 2d 253, 145 N.W.2d 129 (1966).

Nevertheless, the City's violation of Wis. Stat. § 70.055 does not undermine the validity of the City's assessment. The statutory provisions of chapter 70 set forth:

> The directions herein given for the assessing of lands and personal property and levying and collecting taxes shall be deemed directory only, and no error or informality in the proceedings of any of the officers entrusted with the same, not affecting the substantial justice of the tax, shall vitiate or in anywise affect the validity of such tax or assessment.

Wis. Stat. § 70.555. Therefore, only if hiring Nicholson affected the substantial justice of the tax on the Property in 2016 would the tax assessment's validity be in doubt.

Nordstrom did not allege that Nicholson's calculations through the MVS were improperly considered. Nicholson did not provide a market value or assessed value of the Property for 2016. He did not testify at trial to the proper market value of the Property in 2016. He provided reproduction and replacement cost calculations to the City Assessor, from which she analyzed the costs, considered the effect of obsolescence, and set the assessed value of the Property. Nicholson's calculations are substantially similar to the calculations by the other experts. Thus, though the City erred, such error was not material to the determination of whether the City's assessment in 2016 was excessive. The Court finds that the City's assessment is valid despite the City's failure to follow directory statutes, as provided in Wis. Stat. § 70.555.

II. Even if the assessment did not have the presumption of correctness, Nordstrom has not proven its case to preponderance of evidence standard.

The City argues that the burden of proof is always on Nordstrom to prove every element of its excessive assessment claim and that the burden never shifts back to the City. Nordstrom argues that because the City Assessor revised the assessments on the Property after the assessment roll was signed and those changes were sustained by the Board of Review, the assessed values for 2015 and 2016 do not have the presumption of correctness. The relevant statute sets forth:

> The value of all real and personal property entered into the assessment roll to which such affidavit is attached by the assessor shall, in all actions and proceedings involving such values, be presumptive evidence that all such properties have been justly and equitably assessed in proper relationship to each other.

Wis. Stat. § 70.49(2). Nordstrom acknowledged that the assessor revised the assessments and the Board of Review granted her requests to reduce the assessed value. Krause testified that she could no longer change the assessment roll after it was delivered to the Board of Review. It is unclear from the evidence at trial and in the record whether the final assessment was an amendment to the assessment roll or if the assessment was a Board of Review decision.[6]

"While the circuit court conducting a de novo review gives no deference to the Board of Review's decision, the underlying assessment still carries a presumption of correctness." *Metro. Assocs.*, 2011 WI 20, ¶ 10. No party is a proponent of the initial assessed value on the assessment roll; it was substantially higher for both tax years. Furthermore, the Court "cannot impose a greater tax burden than the one the taxation authority already agreed to when it accepted the taxpayer's payment." *Trailwood Ventures, LLC v. Vill. of Kronenwetter*, 2009 WI App 18, ¶ 13, 315 Wis. 2d 791, 762 N.W.2d 841.

The first issue is whether the City has established the presumption of correctness for its assessment of the Property. In *Bonstores*, the court found that the municipality "met its burden of establishing the presumptive fair market value of the property" because the property owner and the municipality agreed that the property was assessed at a specific value. *Bonstores*, 2013 WI App 131, ¶ 10. Here, both parties submitted proposed findings of fact and conclusions of law after trial. The parties acknowledged that the assessed value of the Property was the listed on the tax bill as $12.2 million in 2015 and $29.9 million in 2016 and from those amounts, the property taxes were calculated and Nordstrom timely paid the taxes.

In *U.S. Oil Co. v. City of Milwaukee*, the city convinced the Board of Review to increase the assessed value of the taxpayer's property. 2011 WI App 4, ¶¶ 5-6, 331 Wis. 2d 407, 794 N.W.2d 904. The trial court found that the taxpayer rebutted the presumption of correctness with significant contrary evidence and the Court of Appeals affirmed, but both courts attached the presumption of correctness to the Board of Review decision. *Id.* However, the trial court reduced the assessed value to the original assessment that the taxpayer had appealed to the Board of Review. The Court does not face a parallel situation and only notes that the presumption was attached to that Board of Review decision.

Wisconsin law has not clearly addressed whether the revised assessment at the Board of Review is afforded the presumption of correctness; however, the statutory presumption gives weight to the Assessor's valuation. Here, the revised values are the Assessor's opinions on the market values of the Property in 2015 and 2016. The Court is persuaded that the presumption of correctness does apply to the assessed values for which the Property was taxed in 2015 and 2016 and upon which taxes were paid. If the revised assessments are not afforded the presumption, then Nordstrom would still have the burden to show that the assessment

[6] Wis. Stat. § 70.48 provides for a process by which the clerk may correct the assessment roll during the Board of Review process. Although the 2015 Board of Review (Ex. #29) appears to comply with this statute, the record does not clearly establish the status of the assessment roll and that process is undeveloped in the evidence for 2016.

was excessive. Although the presumption simplifies the framework of a Wis. Stat. § 74.37 claim of excessive assessment, the Court "retains the obligation to weigh the competing evidence, including the presumption, and to determine whether the presumed fact is more probable than not." *Bonstores*, 2013 WI App 131, ¶ 9.

In the alternative, Nordstrom retains the standard burden of proof for a civil claim to show that the City made an excessive assessment of the Property. Nordstrom must show by a preponderance of evidence that the assessment was both excessive and not made in compliance with the WPAM and Wisconsin law. *See Adams Outdoor*, 2006 WI 104, ¶ 26; *Walgreen*, 2008 WI 80, ¶ 17.

Nordstrom has failed to meet its burden to prove excessive assessment with or without the City's assessment has the presumption of correctness. Nordstrom has not shown that it is more likely than not that the City's assessment was excessive or made out of compliance with the WPAM or Wisconsin law. It has not submitted significant contrary evidence because the Court was unpersuaded the depreciation and obsolescence deductions Nordstrom asserted were reliable and credible or supported by the WPAM and Wisconsin law.

CONCLUSION

For the reasons set forth above and on the trial testimony, the Court concludes that Nordstrom has not proven that the City assessed excessive assessments on the Property. Further, Nordstrom has not shown that the City's assessments were performed in violation of Wisconsin law or the WPAM.

IT IS HEREBY ORDERED that the City's assessments of the Property for tax years 2015 and 2016 are sustained. Nordstrom's claim of excessive assessment is denied.

THIS IS A FINAL ORDER OF THE COURT FOR THE PURPOSES OF APPEAL.