

**FILED**  
**08-05-2019**  
**Clerk of Circuit Court**  
**Waukesha County**  
**2016CV001585**

**DATE SIGNED: July 29, 2019**

Electronically signed by Jennifer R. Dorow  
Circuit Court Judge

**STATE OF WISCONSIN  
CIRCUIT COURT  
WAUKESHA COUNTY**

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**SHERWOOD MANOR VI, LLC**

**Plaintiff.**

**Case No. 15-CV-1411  
16-CV-1585**

**v.**

**Case Code: 30101**

**CITY OF BROOKFIELD,**

**Defendant.**

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**COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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**Overview**

1. This is an action pursuant to Wis. Stat. §74.37(3)(d) for a partial refund of real estate taxes imposed on Plaintiff Sherwood Manor VI, LLC ("Sherwood") by the City of Brookfield (the "City") where Sherwood has alleged the assessments for the 2014 and 2015 tax years were excessive.
2. The subject property is a three-tenant medical office building located at 13800 West North Avenue in Brookfield and is identified in the City records as Tax Parcel No. BR C1059075 (the "Property").
3. For 2014 and 2015 the Property was assessed at \$7,565,800. The property tax imposed on the Property for 2015 was \$122,374 and \$122,642 for 2014. (Ex. 301, p.19)

4. The Property was constructed in 1989 as a hardware store and was remodeled in 2007-2008 for its current use as a multi-tenant medical office. Three tenants have occupied the property since the Property was remodeled, namely Affiliated Dermatologists, Greater Milwaukee Plastic Surgeons and Children's Hospital of Wisconsin. (the "Tenants")(Ex. 301, p. 19)
5. Affiliated Dermatologists leases 8,194 sq. ft. of the Property with a lease commencement date of 9/1/2007 for an initial rental rate of \$22.50 which had stepped up to \$24.50 for the tax years at issue based on a rent escalation clause included in the lease. The landlord provided the tenant with a tenant improvement allowance of \$50 per sq. ft. (Ex. 301, p. 20)
6. Greater Milwaukee Plastic Surgeons leases 5,506 sq. ft. of the Property with a lease commencement date of 12/1/2007 for an initial rental rate of \$22.00 which had stepped up to \$27.06 by January 1, 2015 based on a 3% annual rent escalation clause included in the lease. The landlord provided the tenant with a tenant improvement allowance of \$50 per sq. ft. (Ex. 301, p. 21)
7. Children's Hospital of Wisconsin leases 8,852 sq. ft. of the Property with a lease commencement date of 12/1/2008 for an initial rental rate of \$21.00 which had stepped up to \$25.15 by January 1, 2015 based on a 2.5% annual rent escalation clause included in the lease. The landlord provided the tenant with a tenant improvement allowance of \$50 per sq. ft. (Exhibit 301, p. 21)
8. Mr. Land, the assessor testified: "Typically when leases are negotiated, leases are determined based on give and take and there's always tenant improvement. That's usually one of the negotiation points as far as rent per square foot, and they're also taking a look at the amount of tenant improvements." (Day 2, pp. 11-12)
9. The cost for the costs of the interior finish, also called a tenant improvement allowances, is negotiated at the time the lease is signed and could have an impact on the rental rates depending on whether the landlord or tenant pays for the interior improvements. (Day 1, p. 114)
10. Sherwood did not disclose the terms of the Tenant leases to the City until after the 2014 assessment had been set by the assessor. This is so even though the assessor, Mr. Land, made repeated requests to Sherwood's tax representative to obtain copies of the Tenant leases before setting the assessment. (Day 1, p. 156)
11. Because Mr. Land was not provided with the Sherwood leases when he prepared the initial mass appraisal he had no way of knowing the size of each tenant space, the amount of rent charged or the amount of the tenant improvement allowances, if any, built into each Tenant lease prior to setting the initial assessment for the Property. (Day 2, pp. 61-62)

12. Under the Tenant leases, the Tenants reimburse the landlord- Sherwood on a prorata basis for the expenses of operating the Property. The operating expenses the Tenants are responsible for are defined in the leases and include: real estate taxes, insurance, repairs and maintenance, replacements, utilities, administrative and management expenses, legal fees, and supplies, among other things. (Ex. 301, p. 20)
13. The Property was sold on September 5, 2013 via warranty deed for \$7,613,069 by the Plaintiff. (Ex. 412) The City's expert, Mr. Landretti reports that: (1) the buyer obtained conventional financing for the funds to acquire the Property; (2) the building was fully occupied by the 3 Tenants at the time of sale; (3) the broker involved in marketing the Property had names of buyers interested in purchasing medical office buildings; (4) the buyer purchased the Property via a 1031 tax free exchange; (5) the buyer believed the opportunity offered good returns and he liked the location; and (6) no unusual circumstances were noted in the sale transaction. (Ex. 301, p.20; Ex. 305)
14. The Property's assessment of \$7,565,800, (the "Assessment") equate to 99.38% of the sale price of the Property. The Assessment is not identical to the sale price because it was determined determined using mass appraisal methods and techniques, applied uniformly to the assessments of all medical offices properties in the City. (Ex. 30)
15. Mr. Landretti concludes the sale price of \$7,613,000 represents the market value of the Property for 2014 and 2015. (Ex. 301, p.20)
16. Based on the law, facts and reasons as set forth below, the Court finds that the 2014 and 2015 assessments were properly determined using mass appraisal based on the best information practically available and were therefore set in accordance with Wis. Stats. §70.32(1).
17. Based on the law, facts and reasons set forth below, Sherwood's opinion of value that unreasonably and without credible evidence disregards the recent arm's length sale price of the Property is contrary to Wisconsin law and therefore cannot *per se* constitute significant contrary that the assessments are excessive.
18. The Court finds that the presumption of correctness afforded to the assessments under Wis. Stat. §70.49(2) has not been rebutted by significant contrary evidence or by a showing that the assessments were set in a manner inconsistent with the Wisconsin Property Assessment Manual (the "Manual") or Wisconsin law. The assessments are hereby affirmed and judgement shall be entered in the name of the City. Sherwood's claims for a property tax refund is denied.

#### **Standard of Review**

19. A §74.37 action for excessive assessment is a *de novo* review by the court of the *assessment*. This means that § 74.37(3)(d) allows the court to proceed without regard to any valuation determination

made at an earlier proceeding. *Bloomer Hous. Ltd. P'ship v. City of Bloomer*, 2002 WI App 252, ¶ 11, 257 Wis. 2d 883, 653 N.W.2d 309; citing, *Nankin v. Village of Shorewood*, 2001 WI 92 at ¶ 25, 245 Wis.2d 86, 630 N.W.2d 141.

20. In a *de novo* action, the court can hear new evidence submitted by both parties. *Id.*; citing, *Nankin v. Village of Shorewood*, 2001 WI 92 at ¶ 25.
21. “[t]he circuit court, as the trier of fact, is the ultimate arbiter of the weight and credibility of the evidence and of any reasonable inferences drawn from that evidence. We may not consider whether the evidence might support a contrary conclusion, or a contrary inference that is reasonable. We therefore examine the record as a whole to determine whether evidence, and reasonable inferences therefrom, support the court's conclusion.” *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, ¶10, 351 Wis.2d 439.

### **Presumption of Correctness Afforded The Assessment**

22. Assessments are entitled to a presumption of correctness pursuant to Wis. Stats. §70.49(2).
23. “Wisconsin Stat. §70.49(2) provides that a tax assessment being challenged pursuant to Wis. Stat §74.37 is entitled to a presumption that it was “justly and equitably” made, giving rise to a presumption of correctness. The presumption can be overcome if the challenging party presents significant contrary evidence. *Metropolitan Associates v. City of Milwaukee*, 2018 WI 4, ¶ 50, 379 Wis.2d 141. (citations omitted)
24. The Assessor's Affidavit is attached to each year's assessment roll. The Brookfield's Assessor's Affidavit was received at trial as Exhibit 365.
25. 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. *Metropolitan*, ¶ 50, fn. 11.
26. Wis. Stats. §70.49 provides the statutory basis for the presumption that each assessment contained in the assessment roll has been justly and equitably made.

70.49 Affidavit of assessor.

(1) Before the meeting of the board of review, the assessor shall attach to the completed assessment roll an affidavit in a form prescribed by the department of revenue.

(2) 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.

(3) No assessor shall be allowed in any court or place by oath or testimony to contradict or impeach any affidavit or certificate made or signed by the assessor as assessor.

27. The law is well established that an assessment that is just and equitable be upheld.

If a taxpayer can attack the validity of a tax levied upon his real property upon the ground that it is over valued by the assessor and upon that basis recover the excess, every assessment of real estate would be open to attack and the tax would never be valid unless the valuation fixed by the assessor was as low or lower than that fixed by the reviewing court. As was said in the cases already cited, the equitable principle that there can be no recovery of tax paid unless it be shown that it is inequitable, that is, that the taxpayer is required to pay more than his just and fair share of taxes, applies, and unless facts are established which show that the tax is unjust and unfair, there can be no recovery.

*Krom v. City of Antigo*, 220 Wis. 542, 265 N.W. 716, 718 (1936).

### **Application of the Presumption of Correctness**

28. An assessor's valuation stands as prima facie correct as "the assessment needs no support by evidence in the first instance, but must stand, unless shown to be incorrect by reasonably direct and unambiguous evidence." *Sausen v. Town of Black Creek Bd. of Review*, 2014 WI 9, ¶ 34. Thus, it is the amount of the assessment that enjoys the statutory presumption and the taxpayer must demonstrate the assessment amount is incorrect.

29. "If by any reasonable view of the evidence the assessment is valid, it must be upheld." *Clear Channel Outdoor, Inc. v. City of Milwaukee*, 2017 WI App 15, ¶4, 374 Wis.2d 348, 893 N.W.2d 24; citing, *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, ¶5, 351 Wis.2d 439.

30. The taxpayer has the burden to show that the assessment is excessive. *Regency West Apartments LLC v. City of Racine*, 2016 WI 99, ¶ 72, ftnt. 23; citing, *Sausen v. Town of Black Creek Bd. of Review*, 2014 WI 9, ¶ 20, 352 Wis.2d 576, 843 N.W.2d 39.

31. To overcome the presumption the owner must present “significant contrary evidence” or a challenge will be rejected. *Adams Outdoor Advertising Ltd. v. City of Madison*, 2006 WI 104, ¶25, 294 Wis. 2d 441, 717 N.W.2d 803.
32. “The taxpayer has the burden of presenting evidence to overcome this burden. Its evidence must compel the conclusion that the assessor's valuation was incorrect.” *Xerox Corp. v. Wisconsin Dept. of Revenue*, 114 Wis. 2d 522, 528, 339 N.W.2d 357 (Ct. App. 1983) (citations omitted).
33. “[T]he assessor does not have to have perfect information[,] when setting an assessment, only ..... the best information practically available.” *Marathon Petroleum Company LP v. City of Milwaukee*, 2018 WI App 22, ¶53, 381 Wis.2d 180, *petition for review denied*, 2018 WI 100.
34. Critique of the assessor alone does not overcome the presumption of correctness. *Bonstores*, 2013 WI App 131; *Sausen*, 2014 WI 9, ¶ 34.
35. An opinion of value which ignores the statutory factors is not “significantly contrary evidence” necessary to overcome the presumption that the assessment is valid. *Great Lakes Quick Lube v. City of Milwaukee*, 2011 WI App 7, ¶ 18, 331 Wis.2d 137.
36. Plaintiff's expert has failed to follow the statutory hierarchy and recognize the sale of the Sherwood Property as a tier 1 market sale; therefore, Plaintiff's evidence cannot, per se, overcome the presumption of correctness afforded to the assessment.

### **Burden of Proof**

37. To maintain a §74.37 action, the taxpayer is required not only to overcome the presumption of correctness, but is also required to satisfy the burden of proof on all elements of its claims.
38. Courts have long held that the taxpayer has the burden to prove whether a sale of the subject property is or is not a market sale. *Doneff v. City of Two Rivers Bd. of Review*, 184 Wis.2d 203, 216 and 218, 516 N.W.2d 383 (1994).
39. The burden of proof does ***not*** shift to the government at any time. “Conditions set forth in the *Property Assessment Manual* cannot be construed to change long-standing law and create a legal presumption that shifts the burden of proof from a taxpayer to a city.” *Doneff v. City of Two Rivers Bd. of Review*, 184 Wis.2d 203, 216-217, 516 N.W.2d 383 (1994). Instead, the overall burden of proof remains with the taxpayer. *Id.*
40. “An assessment must be based on value, and the best information of value is an arm's-length sale. Thus, a taxpayer contending that a recent sale does not represent the property's value because the sale was not at arm's-length has the burden of proving that any circumstance it claims made the sale

not an arm's-length transaction actually affected the price. See *Flood*, 153 Wis.2d at 437, 451 N.W.2d at 426." *N/S Associates v. Board of Review of Village of Greendale*, 164 Wis. 2d 31, 42, 473 N.W. 2d 554.

41. "The taxpayer has the burden of showing that the sale was not made 'under normal conditions.'" *Flood vs. Lomira, Bd. of Review*, 153 Wis.2d 428, 437, 451 N.W.2d 422 (1990).
42. Based on the law, facts and reasoning set forth below, the Court finds that Sherwood has not met its burden with a showing that the sale of the subject was not an arm's length sale made under normal conditions or that the Sherwood Manor leases contained above market terms that elevated the sale price above market value.

### **Overview of the Experts Qualifications**

43. "The circuit court conducted a trial that included expert testimony. Where there is conflicting testimony the fact finder is the ultimate arbiter of credibility. "The weight and credibility to be given to the opinions of expert witnesses is 'uniquely within the province of the fact finder.'" *Adams*, ¶27
44. "[t]he circuit court, as the trier of fact, is the ultimate arbiter of the weight and credibility of the evidence and of any reasonable inferences drawn from that evidence. We may not consider whether the evidence might support a contrary conclusion, or a contrary inference that is reasonable. We therefore examine the record as a whole to determine whether evidence, and reasonable inferences therefrom, support the court's conclusion." *Bonstores*, ¶ 10.

### ***The City's Expert Appraiser - Dominic Landretti***

45. The City retained Mr. Dominic Landretti, MAI as an expert appraiser in this case. Mr. Landretti is a Wisconsin certified appraiser and certified assessor. Mr. Landretti has been the owner of Landretti and Company since 2006, which is a real estate valuation firm specializing in the valuation of a variety of property types. He has frequently testified in eminent domain cases and property tax appeals. Mr. Landretti's representation includes a diverse client base including attorneys, municipalities, lending institutions, private property owners, developers, and government agencies. (Exhibit 301, p. 68)
46. Mr. Landretti is very familiar with the value of medical office buildings in the City of Brookfield, having also appraised two other medical office buildings in Brookfield that sold around the same time as the sale of the subject property. The other two medical office buildings appraisal by Mr. Landretti were located at 1350 S. Sunnyslope Road, Brookfield and 21700 Intertech Drive, Brookfield. The seller was the same for all three properties. (Exhibit 304 - 1350 S. Sunnyslope Road and Exhibit 303 - 21700 Intertech Drive)

47. For his appraisal report, Mr. Landretti performed a single property appraisal that conforms with Wisconsin law. Mr. Landretti determined the fee simple value of the Sherwood leased property. In his report, Mr. Landretti sets forth the Manual provisions and case law that he follows in his appraisal. (Ex. 301, pp. 3, 9-15)
48. Complying with the well-established hierarchy of Wis. Stat. §70.32(1), Mr. Landretti performed a tier-1 analysis of the sale of the Property in his appraisal. Mr. Landretti testified that the fair market value of the subject property is equal to that of the recent sale price of the property of \$7,613,069. He found the sale of the Property was an arms-length sale that conformed to the sale prices of other reasonably comparable properties. In addition, Mr. Landretti performed a market rent study and determined from that study that the rents paid by the three Tenants of the Property were at market levels. Mr. Landretti concluded and testified that the Assessments, were not excessive. (See Exhibit 301 for Mr. Landretti's appraisal report)
49. Mr. Landretti prepared and signed his report and included a certification that is required of all MAI appraisers. (Ex. 301, p.4) In his certification, among other things, Mr. Landretti certifies that:
- a. The facts contained in the report are true and correct,
  - b. The reported analysis, opinions and conclusions are his personal, impartial and unbiased professional analysis, opinions and conclusions,
  - c. He has no present or prospective interest in the property and no personal interest with respect to the parties involved,
  - d. He has not performed any services within the immediate 3 year period relative to the property,
  - e. The assignment is not contingent upon developing or reporting predetermined results,
  - f. His compensation for completing the appraisal is not contingent upon developing or reporting of a predetermined value, and
  - g. He has made a personal inspection of the subject property. (Exhibit 301, p. 4)
50. Mr. Landretti's certification also includes information that he was assisted in the preparation of the introduction, data and valuation section of his report by Marya Geiger. (Ex. 301, p.8) At trial, he explained that Ms. Geiger is his qualified assistant, holding a double degree in accounting and finance from UW Madison, an MBA in Real Estate from UW Madison, and holds a certified general appraisal license in the State of Wisconsin. Thus Ms. Geiger has the education and experience to provide assistance in the preparation of his appraisal report. (Ex. 301, p.4; Day 4, p. 45)
51. Mr. Landretti testified that it is important to have someone with sufficient qualifications to assist in gathering data or assisting in the appraisal process. "If you're not quite familiar with the process or don't have the training, some things can get missed." (Day 4, p. 46)



***The City's Expert - Dr. Thomas Hamilton***

52. The City has also retained Dr. Thomas Hamilton, Ph.D., MAI, CRE, FRICS, as an expert in generally acceptable appraisal practices. Dr. Hamilton is president and owner of Karvel-Hamilton and the Gerald Fogelson Distinguished Chair in Real Estate at Roosevelt University. (Exhibit 325, p. 20) He holds the MAI (Member of Appraisal Institute) credential. Dr. Hamilton holds a PhD in real estate (from UW Madison) and is a professor of real estate at Roosevelt University in Chicago having taught real estate valuation and appraisal practices for over 35 years. Dr. Hamilton also teaches advanced appraisal courses for The Appraisal Institute which is the organization that credentials appraisers as an MAI (Member of the Appraisal Institute) Dr. Hamilton holds two Master's degrees in Finance and Real Estate and Urban Land Economics. Dr. Hamilton also holds a Ph.D. in Urban Land Economics. (Ex. 325, pp. 20-22)
53. Dr. Hamilton was on the development teams for the Appraisal Institute Course, Quantitative Analysis and for the seminar, "Contract or Effective Rent: Finding the Real Rent." (Ex. 325, p. 20)
54. Dr. Hamilton is on the Editorial Board of *Real Estate Issues and the Journal of the Center for Real Estate Studies*. He is also a technical reviewer for both *The Journal of Property Tax Assessment and Administration* and *The Appraisal Journal*. (Ex. 325, p. 20)
55. Dr. Hamilton has published a number of peer reviewed articles dealing with the valuation of real property. (Ex. 325, p.21-22)
56. Dr. Hamilton has been recognized as an expert in generally accepted appraisal practices by the Wisconsin Court of Appeals. See, *Marathon Petroleum Company LP v. City of Milwaukee*, 2018 WI App 22, ¶45, 381 Wis.2d 180, 912 N.W.2d 117.
57. Dr. Hamilton performed a review appraisal of the Plaintiff's expert's (Mr. Watson) report. Dr. Hamilton testified that Mr. Watson's report and testimony were contrary to generally accepted appraisal practice and the appraisal guidelines proscribed under the Wisconsin Property Assessment Manual. Dr. Hamilton concludes that relative to Mr. Watson's sales, income and cost approaches to value that, "Each of the three individual approaches to value has significant missing data or unexplained analysis resulting in unreliable opinions of value for each approach to value. Therefore, the overall value conclusions for each date of value in the appraisal assignment are not credible and unreliable." (Ex. 325, p.14)
58. Dr. Hamilton further finds that the appraisal methodology used in the Watson report incorrectly concludes that the sale of the Property was not an arm's length sale or market transaction based on the appraisal guidelines set forth in the Manual and the Markarian Hierarchy. (also known as the 3 tier valuation hierarchy) (Ex. 325, p.14)

59. Dr. Hamilton's testimony at trial demonstrated that the location of a medical office building is critical to its market value. Dr. Hamilton testified that medical offices located in Brookfield sell at significantly higher sale prices when compared to medical office buildings in the City of Milwaukee for example, given the significant difference in medical dollars spent as between those two communities. Dr. Hamilton also used the ESRI market data to explain at trial why the alleged comparable rents and sales used by Mr. Watson are not comparable to the Property given the wide disparity in medical dollars spent in those communities. (Ex. 342-1 and 342-2)

#### **The Assessor, Alan Land**

60. Mr Land is the statutory assessor for the City of Brookfield. He has served as an assessor since 1987, at first with the City of Milwaukee. As statutory assessor, Mr. Land has additional responsibilities including overseeing the development and completion of the assessment tax rolls. (Day 1, p.149-150)
61. Mr. Land worked for the Wisconsin Department of Revenue from 2007 to 2012 as a Supervisor of Equalization. In that role, Mr. Land was overseeing the assessment operation for all assessors in Southeast Wisconsin. (Day 1, p. 142)
62. During that time, Mr. Land had occasion to analyze real estate sales as reported on Wisconsin Real Estate Transfer Returns. (Day 1, p. 142)
63. Mr. Land is certified by the Wisconsin Department of Revenue as both an Assessor 2 and an Assessor 3. As an assessor 2, he is qualified to assess commercial property. As an assessor 3, Mr. Land is qualified to administer the assessor's office of a large municipality. (Day 1, p.149)
64. The statutory assessor signs the assessor's affidavit before the Board of Review at the first meeting of the Board and then delivers the assessment roll to the Board. (Day 1, p.151; Ex. 365)
65. Once the assessment roll is delivered to the Board, the assessor can no longer make any changes to the assessments. (Day 1, p. 151)
66. Mr. Land provided extensive testimony at trial, not only when he explained how he determined his mass appraisal valuations, but also he described the extensive research he did to educate himself on the real estate market for medical office buildings before setting the 2014 assessment. (Day 1, pp. 213-222)
67. The Court finds that Mr. Land is eminently qualified as an assessor and his work relative to the 2014 and 2015 assessments to be credible and reliable.

***Sherwood's Expert Appraiser - Robert Watson***

68. Sherwood retained Mr. Robert Watson,, to produce an appraisal report which opines to the market value of the Property for 2014 and 2015. Mr. Watson testified at trial that the Property is worth no more than \$4,850,000, or 64% of the sale price that occurred just a few months before the first valuation date. Mr. Watson rejects the sale price as providing any evidence whatsoever of the market value of the Property for the tax years at issue. (Day 2, pp. 197-198; Ex. 17)
69. Watson also maintained a workfile which he testified provides some back up support for the data relied upon in his appraisal report. (Day 2, pp. 198-199; Ex. 108 and Ex. 452-1 to 452-14)
70. Mr. Watson has performed other appraisal work for Sherwood's counsel's law firm in property tax matters. (Day 2, p. 212) This includes the preparation of appraisal reports in a companion case involving two other medical properties in Brookfield acquired by Broadstone around the same time the Sherwood Property was purchased. (Exhibit 454 - 2014-15 appraisal of 1350 S. Sunnyslope Rd., Brookfield and Ex. 455 - 2014-15 appraisal of 21700 Intertech Drive, Brookfield. )
71. Mr. Watson is not a Member of the Appraisal Institute, ("MAI") a respected designation for any appraiser in the appraisal industry to obtain. (Day 3, p. 112-113)
72. Becoming an MAI was never something that was of interest to Mr. Watson. (Day 3. p.116)
73. Even though Mr. Watson acknowledged the MAI credential carries some weight in the appraisal world, he just "didn't pursue it seriously." (Day 3, p.113)
74. Mr. Watson was once close to being eligible to become an MAI but "they changed the qualifications. They -- There's a lot of changes going on in the industry. There's -- I just didn't pursue it seriously." (Day 3, p.113)
75. Mr. Watson was aware that the Appraisal Institute, the credentialing body that awards the MAI designation, was moving more towards quantitative analysis in appraisal work as opposed to qualitative which relies upon an appraiser's many years of experience for conclusions. (Day 3, p.117)
76. Mr. Watson is also aware of articles discussing the fact that the appraisal industry is moving toward the practice of appraisers using more quantitative appraisal analysis. (Day 3, p. 117)
77. Mr. Watson has not taken any courses to update his knowledge in modern quantitative analysis techniques in valuing property, since the early 1990s. (Day 3, p.117)
78. The last time Mr. Watson took classes from the Appraisal Institute listed on his qualifications in his report was "probably in the 90's" (Day 3, pp. 116-117) (Ex. p.107)

79. Watson provides in the certification of his appraisal and testified that he had the assistance of his brother in the appraisal assignment, who has no training in appraisal of properties whatsoever. “Jeffrey P. Watson provided significant real property appraisal assistance to the person signing this certification. The extent of assistance included collection of property data, research, verification of comparable sales, and report preparation.” (Exhibit 17, p.105)
80. Watson states in his report that he applied “accepted appraisal theory” in reaching his valuation conclusions, not the Wisconsin Property Assessment Manual. (Exhibit 17, p. 9) This is contrary to Wis. Stat. §70.32(1) which requires valuations for property assessment valuations to comply with the guidelines contained in the Wisconsin Property Assessment Manual. ( See, Ex. 18 for Wis. Stats. §70.32)
81. Mr. Watson's appraisal report does not contain any specific references to the Manual. He claims to have followed the Manual when he prepared his report; yet his appraisal report are devoid of any specific references to the Manual. Watson testified, “I think in this case it was just omitted.” (Day 2, p. 215)
82. Mr. Watson testified that he usually includes references to the Manual when he prepares appraisal reports for property assessment purposes. (Day 2, p. 216)
83. Mr. Watson admitted that he had also omitted any references to the Manual in the other appraisals he had prepared for the two Brookfield medical offices properties purchased by Broadstone. (Day 3, pp.108-109)
84. Because Mr. Watson had no cited references to the Manual in his report to demonstrate he compliance with applicable provisions of the Manual, at trial Plaintiff's counsel went through several provisions of Chapter 7 of the Manual to try to rehabilitate Mr. Watson on this point. (Day 2, 227-228)
85. Based on the facts and the reasons set forth below, the Court finds that Mr. Watson's methods of valuation are not consistent with Wisconsin assessment law or with generally accepted appraisal practices and therefore are not significant contrary evidence able to overcome the presumption of correctness afforded the assessment under Wis. Stat. §70.49(2) or to demonstrate that the Assessments are excessive.

#### **Retrospective Appraisals And Best Information Practically Available**

86. The assessor must value real property “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. Wis. Stats. §70.32(1)

87. “[T]he assessor does not have to have perfect information[,] when setting an assessment, only ..... the best information practically available.” *Marathon* ¶153.
88. Property is to be assessed and valued as of January 1st of each year. Wis. Stats. §70.10. In this case, the assessment valuation dates are January 1, 2014 and January 1, 2015.
89. The Court rejects that appraisers who provide “retrospective opinions of value,” as both experts did in this case, can take into account information that occurs after the assessment date.
90. The Court is making its determinations on relevance information based on what available to the assessor at the time the assessment is made. Any information the expert has now is not relevant because it wasn’t information available then to the assessor. (Day 2, p.125)
91. The Court finds that the standard of significant contrary evidence, is not a free-for-all to bring in everything and anything to support a theory. The information must still be relevant to the applicable time period. (Day 2, p.123-124)
92. The Court further finds that there would be no finality to an assessment case if litigants can bring in evidence that occurred after the fact and retroactively apply it back to the assessment dates. That is contrary to the intent of the assessment statutes and cannot constitute contrary evidence to show the assessment is excessive.(Day 2, pp. 125-126)
93. The *Rosen* case does not support the contention that evidence not in existence at the time of assessment is proper to use against an assessor. *Rosen v. City of Milwaukee*, 72 Wis. 2d. 653, 242 N.W. 2d 681 (1976) No recent sale of the subject property was involved in the *Rosen* case. *Rosen*, at 664. Also, before using the later sales information the assessor confirmed there was no change in either the rent or market conditions between the sale dates and the assessment valuation date.
94. The *Court* therefore declines to interpret *Rosen* to mean that any information that post dates the valuation date can be used to prove a fact not in existence on the valuation date. *Rosen* clearly holds that only in the situation where the appraiser first determines that there have been no market or other changes between the valuation date and the time of the new information, may that information be considered in a retrospective appraisal.

### **Mass Appraisal**

95. “Wisconsin Stat. §70.32(1) explicitly directs that property be assessed ‘in the manner specified in the Wisconsin property assessment manual.’ The Manual provides that ‘[c]ommercial property can be valued by either single property or mass appraisal techniques.’” *Metropolitan Associates v. City of Milwaukee*, 2018 WI 4, ¶28, 379 Wis.2d 141.
96. “Mass appraisal is the systematic appraisal of groups of properties, as of a given date, using standardized procedures and statistical testing.” 1 Wisconsin Property Assessment Manual at 7-32. “The Manual provides for assessors utilizing mass appraisal in initial assessments: ‘Mass appraisal

is the underlying principle that Wisconsin assessors should be using to value properties in their respective jurisdictions.” *Metropolitan*, ¶29.

97. “Mass appraisal, unlike single property appraisal, requires the development of a valuation model capable of replicating the forces of supply and demand over a large area. Simply put, “the model” recreates mathematically, the changes in the value and the real estate activity happening in the particular town, village, or city being assessed.” (Manual 7-41)(Ex.10, p. 41)
98. “At the initial assessment stage, the best information the City can “practicably” obtain is often that underlying a mass appraisal. Because its use is provided for by the Manual and it allows the City to efficiently assess a large number of properties, mass appraisal comports with Wis. Stat. § 70.32(1). We thus reaffirm that mass appraisal is appropriately utilized as a manner of valuing property under § 70.32(1).” *Metropolitan*, ¶45.
99. “The value reflected in the initial mass appraisal can constitute the value of the property for tax assessment purposes as long as it is not excessive.” *Metropolitan*, ¶46.
100. “The question on appeal in a Wis. Stat. §74.37 action is not whether the initial assessment was incorrect, but whether it was excessive.” *Metropolitan*, ¶40.
101. The assessor used mass appraisal to set the assessment for the subject Sherwood Property. Based on the *Metropolitan* decision, the value reflected in the City’s mass appraisal can constitute the value of the subject Property as long as it is not excessive.
102. The Court finds that Mr. Land’s mass appraisal was based upon the best information practicably available and therefore complies with Wis. Stat. §70.32(1).
103. The City has demonstrated that Mr. Land’s mass appraisal model both takes into account the local market and the specifics of the property using the best information practicably available, for purposes of mass appraisal.
104. The methodology and opinions reached by the assessor are in conformity with Wisconsin law and the Wisconsin Property Assessment Manual.
105. Sherwood has not shown that the City Assessor violated Wisconsin law or the Wisconsin Property Assessment Manual, and therefore Sherwood has not overcome the statutory presumption.

**The Three Tier Valuation Hierarchy Wis. Stat. §70.32(1)**

106. “The power to determine the appropriate methodology for valuing property for taxation purposes lies with the legislature.” *Regency West Apartments LLC v. City of Racine*, 2016 WI 99, ¶ 23; *citing, Walgreen Co. v. City of Madison*, 2008 WI 80, ¶ 19, 311 Wis.2d 158, 752 N.W.2d 687.
107. The three tier valuation hierarchy is set forth in Wis. Stat. 70.32(1). The Wisconsin assessment statute specifically sets forth the manner in which an assessor is to assess real property. Wis. Stat. §70.32(1) states:
- (1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03(2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained 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; 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.
- Wis. Stat. §70.32(1).
108. “Wisconsin Stat. § 70.32(1) provides that ‘property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual.’” *Regency West Apartments*, 2016 WI 99, ¶ 23.
109. “An assessor has an obligation to follow the three-tier assessment analysis.” *Regency West*, ¶ 26; *citing, Adams*, 294 Wis.2d 441, ¶ 47, 717 N.W.2d 803.
110. “The *Property Assessment Manual* and case law set forth a three-tier assessment methodology to ascertain true cash value. Evidence of an arms-length sale of the subject property is the best evidence of true cash value. If there has been no recent sale of the subject property, an assessor must consider sales of reasonably comparable properties. Only if there has been no arms-length sale and there are no reasonably comparable sales may an assessor use any of the third-tier assessment methodologies.” *Adams Outdoor Advert., Ltd. v. City of Madison*, 2006 WI 104, ¶ 34, 294 Wis. 2d 441.

### **Tier 1 - Sale of the Subject Property**

111. “[A]n arm[']s-length sale price is the best indicator to determine fair market value for property tax purposes and an approach that considers factors extrinsic to the arm[']s-length sale is not statutorily correct and therefore in error as a matter of law.” *Great Lakes*, 2011 WI App 7, ¶ 18.

112. “[I]t is error to use [the third-tier] method ‘when the market value is established by a fair sale of the property in question or like property.’”. *Great Lakes*, ¶18.
113. An opinion as to value which ignores the statutory factors is not “significant contrary evidence” necessary to overcome the presumption that the assessment is valid. *Great Lakes*, ¶ 18.
114. The Manual states, “*The goal of the assessor is to estimate the current market value of the bundle of rights for a particular property, considering only those rights and privileges that the owner, or beneficial owner, can transfer to a willing buyer in an arm’s length transaction.*” Manual at 7-9 (Exhibit 12, p.9)
115. In accordance with Wis. Stat. §70.32(1) and the Markarian Hierarchy, the City’s expert, Mr. Landretti, properly used a tier-1 sale of the subject method to value the subject property. Failure to value the property using the tier-1 sale of the subject methodology would have been error. Mr. Landretti’s opinions and his tier-1 sale of the subject valuation are credible. The assessment is not excessive.
116. The Court finds that Sherwood’s expert failed to follow the hierarchy required by Wis. Stat. §70.32(1) As a result, his opinions are not credible and do not constitute significant contrary evidence to overcome the presumption.
117. The City’s expert’s appraisal complies with the decisions of both *Walgreen v. City of Madison*, 2008 WI 80 and *Great Lakes*, 2011 WI App 7.
118. The mere existence of a §1031 sale is not evidence of an unusual motive to purchase real estate. *N/S Associates v. Board of Review of Village of Greendale*, 164 Wis.2d 31, 47-48, 473 N.W.2d 554.

### Wisconsin Real Estate Transfer Returns

119. Mr. Land was alerted to the fact that the Property had been sold in 2013 because the Wisconsin Department of Revenue had transmitted to him, pursuant to Wis. Stats. §77.265(1), a copy of the RETR that the buyer, Sherwood and the seller, Irgens, had electronically filed with the Register of Deeds for Waukesha County. (Day 1, p. 145)
120. The assessor explained at trial the process of filing a Real Estate Tax Return (“RETR”) in Wisconsin where sales of real estate are publically reported. (Day 1, pp. 142-144)
121. It is the job of the assessor to validate and verify each sale reported on a RETR. (Day 1, p.144)



122. Mr. Land investigated the Sherwood sale and reported to the Wisconsin Department of Revenue for notation on the RETR under the heading "Municipal Assessors Information", that the Sherwood sale was a usable arms length sale. (Day 1, p. 146)
123. The RETR reported the sale transaction and the value of the Property sold and was used to calculate the transfer tax due on a sale. (Wis. Stats. §77.22) (Ex.20, p.5-6) (Day 1, p. 144-145)
124. Mr. Land's review of the Sherwood RETR showed him that based on the representations of the buyer and seller as stated on the return: (1) the transfer was not between related parties; (2) the full ownership bundle of rights was transferred in the sale; (3) the "total value of real estate transferred"; and (4) the real estate value subject to the transfer fee; ((Day 1, pp. 146-148)
125. Pursuant to §77.22(1), parties to a sale are required to report the *value* of transferred real estate on the RETR upon which a transfer fee is imposed.
126. The Sherwood Property RETR was received at trial as Exhibit 307. Agents of the buyer and seller electronically signed and filed the transfer tax return on behalf of the parties to the sale; namely the law firms of Reinhart Boerner Van Deuren s.c. on behalf of Sherwood and Foley and Lardner on behalf of the seller. (Ex. 307)
127. Mr. Land had a copy of the Sherwood RETR when he assessed the Property in 2014. (Day 1, p. 145)
128. Statements made on a Wisconsin RETR are admissions of fact. *Great Lakes Quick Lube v. City of Milwaukee*, 2011 WI App 7, ¶26, 331 Wis.2d 137.
129. The sales Landretti and the Assessor relied upon to demonstrate the Sherwood sale conformed to the sales of other reasonably comparable properties include four Wisconsin medical office sales that were part of a multiple property portfolio sale.
130. The City obtained and verified the RETR of the subject and of each of the four portfolio sales as to the real estate values reported in the transfers. (Ex. 307, 308, 309, 310, and 311)
131. The Manual permits the use of portfolio sales in the valuation of a property for use in a sales comparable analysis or in a sales ratio study. (Manual, 14-6, Exhibit 12, p. 6)
132. Under §77.27 "Any person who intentionally falsifies value on a return required to be filed under this subchapter may for each such offense be fined not more than \$1,000 or imprisoned in the county jail not more than one year, or both."

133. The Court finds that the *values* reported on RETR represent credible and reliable information as to the real estate value of a property that is sold. Wis. Stat. §77.27.

### The 2014 Board of Review

134. Sherwood Manor appealed the 2014 assessment of the Property by filing an objection with the Brookfield Board of Review pursuant to Wis. Stat. § 70.47.

135. “The board of review, however, ‘is not an assessing body but rather a *quasi-judicial* body whose duty it is to hear evidence tending to show errors in the assessment roll and to decide upon the evidence adduced whether the assessor’s valuation is correct.’ *State ex rel. I.B.M. Corp. v. Bd. of Review of Fond du Lac*, 231 Wis. 303, 306, 285 N.W. 784 (1939). The board must presume that the assessor’s valuation is correct, and this presumption may be rebutted only by sufficient showing upon sworn oral testimony by the objector that the valuation is incorrect. Wis. Stat. § 70.47(8)(i). If the board determines that the assessment is too high or too low, it must raise or lower the assessment accordingly. § 70.47(6), (9)(a).” *Nankin v. Vill. of Shorewood*, 2001 WI 92, ¶ 18, 245 Wis. 2d 86.

136. The Brookfield Board of Review heard the Sherwood Manor’s objection and sustained the assessment on the merits at \$7,565,800.

137. Wis. Stats. §70.48 requires the assessor to provide the information the assessor has to the Board.

70.48 Assessor to attend board of review. The assessor or the assessor's authorized representative shall attend without order or subpoena all hearings before the board of review and under oath submit to examination and fully disclose to the board such information as the assessor may have touching the assessment and any other matters pertinent to the inquiry being made.

138. The assessor submitted Exhibit 20 to the Board of Review for its consideration in its determination of whether the assessment was correct. Exhibit 20 is the packet of information present to the Board that represents the support for the mass appraisal conclusion the assessor reached based on the 2013 sale price of the Sherwood Property.

139. Mr. Land testified that Exhibit 20 is not a single property appraisal. Exhibit 20 was submitted to satisfy Wis. Stat. §70.48, providing the pertinent information he had to the Board.

140. Exhibit 20 contains the following information:

- a. A summary page of the information input into the mass appraisal equation.
  - b. Photographs of the Sherwood property.
  - c. The Real Estate Transfer Return for the \$7,613,069 sale of Sherwood Property.
  - d. information on the four properties he used to confirm that the sale price of the Sherwood Property conformed to the sale price of other reasonably comparable properties. These comparables all sold in 2013 and included:
    - i. 13980 W. Greenfield Ave, Brookfield, sale price per sqft \$308.27
    - ii. 1231 George Towne Dr, Pewaukee, sale price per sqft \$231.84
    - iii. 21700 Intertech Dr., Brookfield, sale price per sqft \$403.93
    - iv. 4455 S. 108th St., Greenfield, sale price per sqft \$367.26
    - v. Subject - sale price of \$338.35 sqft.
141. Exhibit 20 shows that the sale price of the subject Sherwood property is squarely in the middle of the other 4 comparable properties with two properties selling for less and two properties selling for more than the Sherwood property. This demonstrates that the sale price of the subject conforms to the sale of other reasonably comparable properties.
142. Mr. Land testified that the review of the 4 sales was not a tier 2 sales comparison approach. Instead, the comparison of the 4 sales in Exhibit 20 was prepared to satisfy Wis. Stat. §70.32(1), which requires an assessor assessing a property based upon a sale of a subject property to determine that the sale comports with sales of other reasonably comparable properties.
143. At the time Mr. Land set the 2014 assessments he did not have access to the actual leases for the Sherwood property, despite several attempts to get the leases from Sherwood. (Day 1, 154-156)
144. Mr. Land was given the leases for the Sherwood property in the early morning hours on the day of the Board of Review and at a time when he could no longer make any changes to the assessment. (Day 1, p. 88,151)
145. While Mr. Land may have looked at the leases briefly prior to the Board hearing, he did not have any time to fully analyze the leases. He made no adjustment prior to the Board Hearing. (Day 1, 88) Under Wisconsin law, Mr. Land had no authority to adjust the assessment at the time of the Board of Review hearing, only the Board has that authority at that time. Mr. Land may only make an adjustment to an assessment up until the time he signs the assessment roll and submits it to the Board. (Day 1, pp.151-152; Exhibit 365)
146. Page 10 of Exhibit 20 contains further support for the sale price using a mass appraisal income approach. The best information Mr. Land had available at that time of the 2014 Board of Review hearing included the sale price of \$7,613,069; the gross square footage of the building, which

he believed to be 23,952 based upon City records (as he did not have the actual leases); and a cap rate of 6.5% which he used for medical office properties. Based upon these numbers and other factors going into the mass appraisal model, he was able to calculate a rental rate of \$22.75.

147. Mr. Land testified that the determination of a “rental rate” of \$22.75 is not his opinion of “market rent” for the Sherwood Property. (Day 1, pp. 203-204). Instead the \$22.75 simply represents a possible rental rate, in lieu of an actual contract rent, since he did not have access to the leases. A hypothetical rental rate of \$22.75 falls with the range of market rents for medical office buildings in the Brookfield community as shown at trial. This was the best information practicably available to the assessor when the 2014 assessment was determined, and resulted in a just and equitable assessment.

148. Sherwood’s argument that Mr. Land admitted the Sherwood rents are above market is inconsistent with Mr. Land’s testimony. (Day 1, pp. 203-204)

149. The Court finds that Mr. Land testified there is not one single number that is “market rent.” Instead, Mr. Land consistently testified that there is a range of market rents for medical office buildings in the Brookfield.

150. Mr. Land’s testimony on direct exam by Sherwood that the rental rate of \$22.75 used in his mass appraisal model for 2014, is consistent with his testimony that there is a range of market rents.

151. Mr. Land’s testimony that the contract rents for the Sherwood property are also market rents is also consistent with his testimony that there is a range of market rents in the Brookfield community.

**Ms. Seibel:** Do you have an opinion whether any of the three leases at the subject property are--were above market at the time of sale?

**Mr. Lovell:** Objection. Asked and answered.

**The Court:** Overruled.

**Ms. Seibel:** Do you have an opinion? You can answer that.

**Mr. Land:** Yes. Yes.

**Ms. Seibel:** What is your opinion?

**Mr. Land:** I believe that they are at market. They’re--they’re-- That they’re not above market. They’re well within the range based on this information and based on all the information from the brokers, from the appraisers, from the assessors, that it was all in that range of what is considered typical for medical office buildings. (Day 1, pp. 203-204)

152. Using this information, Mr. Land was able to determine that the assessment that approximated the sale price was just and equitable because (1) the rental rate derived was in the range of rents in the marketplace, (2) the sale price comported with the sales of other reasonably comparable properties. Thus using the best information practicably available, he concluded the assessment at or about the sale price was just and equitable.

### **The 2015 Assessment**

153. For 2015, the City's assessor maintained the assessment of the Property at \$7,565,800.
154. Prior to setting the 2015 assessment, Mr. Land received the actual leases for the Sherwood property. He adjusted the numbers in his mass appraisal model using the actual information contained in the leases, including the actual net square footage and the average contract rent for the Sherwood property of \$25 per sqft. Mr. Land also made an adjustment to the cap rate in his mass appraisal model for 2015. Based upon the new information, which was the best information practicably available for 2015, the assessment remained the same as 2014 at \$7,565,800. (Ex. 30; Day 1, p. 19-20)
155. Exhibit 30 summarizes the method and results of the mass appraisal model completed by Mr. Land for medical office building properties in the City of Brookfield.

### **Building Size and Exhibit 20**

156. The assessor and experts in the case have all used slightly different square feet for the Sherwood building as follows:
- (1) the assessor as used for mass appraisal - 22,809 gross building area (Exhibit 30);
  - (2) the assessor listed in a 2014 Board of Review report - 23,952 sq. ft. (Exhibit 20, p.1);
  - (3) Sherwood's square footage as presented to the 2014 Board of Review - 23,952 sq. ft. (Day 2, p. 20)
  - (4) Mr. Stiloski as reported in the Sherwood Financing Appraisal - 22,046 sq. ft. (Exhibit 427, p. 88);
  - (5) Mr. Landretti as stated in his appraisal report - 22,552 sq. ft. (Exhibit 301, p.17)
  - (6) Mr. Watson as reported in his appraisal report - 22,500 sq. ft. (Exhibit 17, p. 2)

(7) Mr. Watson as shown in his rental comps workfile worksheet - 23,952 sq. ft. (Exhibits 452-11-002; 452-10-003)

157. Sherwood faults the City assessor with initially using an incorrect square footage of 23,952 sq. ft. for the building in the assessor's presentation to the 2014 Brookfield Board of Review. (Exhibit 20) However, Sherwood used the same square footage in its presentation to the Board at the same Board hearing.

**Question:** (Seibel): By the way, at the 2014 Board of Review hearing, did Mr. Kohlenberg on behalf of the taxpayer use the same square footage in his analysis that you did, the 23,952 that appears in Exhibit 20, Page 10?

**Answer:** (Land): Yes he did.  
(Transcript Day 2, p.20)

158. Mr. Land was asked in his adverse examination about the building square feet of 23,952 that is identified on page 10 of Exhibit 20, Mr. Land's packet of information submitted to the 2014 Board of Review. Mr. Land explained at trial the discrepancy between the sqft on Exhibit 20 and the mass appraisal on Exhibit 30 for mass appraisal. (Day 2, pp.18-19)

159. The Court finds that the data used in the 2014 and updated 2015 mass appraisal calculations were based on the best information practically available to the assessor.

160. The Court finds that if there is a discrepancy in sq. footage in the assessor's mass appraisal calculations is inconsequential because the assessments approximate the Tier 1 sale price which is the market value of the Property.

#### **Testimony of Mr. Jennaro Buyer**

161. Mr. Anthony Jennaro is the owner of Sherwood Manor VI, LLC, the owner of the Property. (Day 2, p.96)

162. Sherwood purchased the Property in 2013 for \$7,613,069.

163. According to his broker, Mr. Jennaro was looking to buy property nearby and he liked the investment. (Ex. 305)

164. The purchase of the Sherwood Mr. Jennaro was represented by a real estate broker - Sam Dickman, an attorney - the Reinhart Burner Van Deuren law firm, a CPA - Jeff Frank, and a banker - James Bomberg. (Exhibit 411 and 411, p 1 and 5)

165. Mr. Jennaro does not recall ever being cautioned by any of his four professional advisors not to purchase the Sherwood property because the purchase price was too high or because the rents being paid at the property were above market or not sustainable. (Day 2, pp 168-169)
166. Mr. Jennaro's confirmed that his response to Interrogatory number 9 by the City informed the City to look to the Watson appraisal report for any support for the determination that the purchase price for the Sherwood property was above market. The Watson appraisal was authored on January 15, 2016. Mr. Jennaro purchased the property on September 5, 2013, more than two years earlier. The interrogatory response does not provide any information that he was advised by any of the four professional advisors at the time of the purchase, that the sale price was above market.
167. Thus, it is undisputed that at the time Mr. Jennaro purchased the Sherwood property, none of his four professional advisors, or anyone else, advised him that he was overpaying for the property by some \$3 million, or any other amount.
168. In purchasing the Sherwood property, Mr. Jennaro made an offer to purchase the property for \$7,613,069, which was also the sale price for the property. (Exhibit 401)
169. Mr. Jennaro was looking to purchase property that was close to where he lives, so he could drive by. (Day 2, p. 181) Mr. Jennaro lives in Brookfield and the subject Sherwood property is in Brookfield.
170. The subject property was under contract to be purchased on July 24, 2013, when the counter offer was signed by both parties. (Exhibit 400, p. 1)
171. Mr. Jennaro's purchase of the subject property was prior to the date that Mr. Jenero sold his commercial warehouses located at 325 and 327 N. Broadway in Milwaukee on June 25, 2013. (Exhibit 404, p. 1; Transcript Day 2, p. 140)
172. Mr. Jennaro was not under duress to sell the warehouse properties. (Day 2, p. 140)
173. Mr. Jennaro used a broker, Sam Dickman, in the sale of the two warehouse properties. (Day 2, 143-144) Mr. Jennaro also used Mr. Dickman as his broker to acquire the subject property.
174. The fact that Mr. Jennaro owned these commercial warehouses demonstrates that he did have prior experience in the purchase and ownership of commercial property.
175. Mr. Jennaro's deferred recognizing tax on \$1,037,183 of capital gain by purchasing the subject property as part of a 1031 exchange, a reference to Internal Revenue Code Section 1031. The 1031 transaction was a way for Mr. Jennaro to save on taxes by deferring the capital gains from

the sale of his warehouses by purchasing “replacement” property of real estate of the same or equal value. (Exhibit 404, p.2) (Day 2, pp. 99-103)

176. Mr. Jennaro had identified 3 possible replacement properties to complete the 1031 transaction. Mr. Jennaro acknowledged he did not need to spend \$7 million for the Sherwood Property to successfully complete the 1031 purchase but he liked the subject property and it was close by to where he lived. Mr. Jennaro agreed the \$7 million he paid for the subject property was ? times the amount he needed to spend to buy a replacement property.
177. Mr. Jennaro acknowledged that he made an offer to purchase the Sherwood property just 2 week after the sale of the warehouse properties. (Day 2, p.166) Then two weeks after that he signed the counteroffer to accept the purchase of the Sherwood property. Thus he was not under any duress to purchase the Sherwood property, as he had options available for purchase and made that determination well in advance of any deadline imposed by the 1031 exchange.
178. Mr. Jennaro acknowledged he was not forced or under any compulsion to purchase the subject property. (Day 2, p. 162)
179. Mr. Jennaro had three properties identified as possible purchase properties in his 1031 exchange, including the subject property, and therefore was under no duress to purchase the subject property as a result of the 1031 exchange scenario. (Exhibit 403; Day 2, p. 163)
180. The deed to the subject property shows that he purchased the property in fee simple, together will all the rents, profits, fixtures and other appurtenant interests in the property. (Exhibit 412)
181. The title insurance associated with the purchase of the subject property demonstrates that the property insured was the fee simple interest. (Exhibit 410, p. 6) The insurance policy states that it is for the real estate in the amount of the full purchase price of \$7,613,069. There is no separate policy or amount allocated for any intangibles or leases. (Exhibit 410, p. 6)
182. Mr. Jennaro acknowledged that it's not the leases that have any value in and of themselves, but rather the income producing capacity of the real estate, which is represented by the leases. He agreed the subject Property was purchased for its income-generating potential. (Day 2, p. 194)
183. Mr. Jennaro closed on the purchase of the subject property September 5, 2013. (Exhibit 409; Day 2, p. 152) The closing statement provided the purchase for the real estate alone was \$7,613,069. There was no separate allocation for anything other than real estate, including any separate purchase of leases. The closing statement is signed by Mr. Jennaro.



184. A financing appraisal was completed to support the purchase of the subject property and the loan with PyraMax Bank. (Exhibit 409 and 427; Day 2, p. 153) The financing appraisal was a condition to Mr. Jennaro's ability to purchase the property and obtain a loan from the bank. (Day 2, p. 153) The bank loan was in the amount of \$5,700,000. (Exhibit 428 and 429; Day 2, p. 156)
185. Sam Dickman was Mr. Jennaro's broker in the purchase of the subject property. (Day 2, p. 144) Mr. Dickman assisted Mr. Jennaro in the determining the purchase price for the subject Sherwood property and to purchase the property. (Day 2, p. 144, 162)
186. The seller of the Sherwood property was Irgens. Irgens offered the subject property for sale through a broker. (Day 2, p. 145)
187. The financing appraisal states that the market value of the subject property was \$7,640,000, slightly more than the purchase price of \$7,613,000. (Exhibit 427, p. 2)
188. The real estate mortgage was for \$5,700,000, or approximately 75% of the purchase price. (Exhibit 425)
189. In addition having owned commercial warehouses prior to the purchase of the Sherwood property, Mr. Jennaro also owned some apartment buildings. (Day 2, 181) These are income producing properties.
190. The fact that Mr. Jennaro also owns these apartment buildings is contrary to his assertion and the Plaintiff's argument that Mr. Jennaro never purchased commercial property prior to purchasing the subject property.
191. At the time Mr. Jennaro purchased the property, neither he or his broker did any any market rent study to determine if the rents for the Sherwood property were above market. No one had any information to demonstrate that the rents were above market. (Day 2, p. 179-180)
192. Given that Mr. Jennaro has the assistance of four (4) separate professionals in the sale of his warehouse properties and the purchase of the subject Sherwood property, Mr. Jennaro's purchase was a well informed, educated and well advised purchase.

### **Determining the Assessments**

193. Mr. Allan Land is the statutory assessor for the City. (Day 1, p.149) As the City's Assessor, Mr. Land set the assessments of the Property for the 2014 and 2015 tax years. (Day 1, p.29)
194. Mr. Land acknowledged that Wis. Stat. §70.32 is a statute upon which he would rely as an assessor for property tax purposes. (Day 1 pp. 24, 39; Ex. 18.)

195. Mr. Land testified that the three recent sales of medical office buildings in Brookfield were red flags that alerted him of the need to revalue all the medical office buildings for the 2014 tax year. The property at 1350 South Sunny Slope (purchased by Broadstone) sold for \$5,261,000 in 2013, but had been assessed in 2013 for only \$2,990,000. The property at 21700 Intertech Drive (also purchased by Broadstone) sold for \$8,435,000 in 2013, but had been assessed for only \$3,186,000 in 2013. The Sherwood subject property sold for \$7,613,000 in 2013, but had been assessed for only \$3,044,900 that same year. (Day 1, pp. 168-169).
196. Mr. Land set the assessments for the Property utilizing mass appraisal techniques. (Day 1, pp. 19-21; Ex. 30) Exhibit 30 is the mass appraisal spreadsheet that shows the mass appraisal formula used by Mr. Land to arrive at the assessed values for medical office buildings in the City. (Day 1, p.36) The assessor utilized the same methodology to assess all of the medical office buildings in the City. (Day 1, p. 48)
197. Mr. Land testified that his mass appraisal model is supported by market information from sales of the subject and comparable properties. (Day 1, p. 48)
198. Mr. Land did not admit that the rental rate used in his mass appraisal analysis was above market and Sherwood's contention in its brief that he did is misleading to this Court.
- a. Mr. Land did mass appraisal based upon an income approach formula that was based on the sale prices of the 3 Brookfield medical offices sold in 2013.
  - b. 2014 assessment: Mr. Land used the best information practicably available, which was the sqft of the property in the City's records, a determination of the capitalization rate (uniformly applied) and the 2013 sale price. He did not have the actual leases. Plugging these numbers into his formula, he determined a rental rate of \$22.75.
  - c. 2015 assessment: By this time, Mr. Land was in possession of the actual leases for the subject property. He did not have them when the 2014 mass appraisal was calculated. (Day 1, p.55) Using the same mass appraisal income approach formula, Mr. Land inputted the actual square footage (which was slightly less than the number he used in 2014), the actual rent (which he knew to be within the range of rents in the marketplace based upon his review of rents in Brookfield and surrounding communities, and was slightly higher than the number he used in 2014), and slightly adjusted the cap rate to recognize a multi tenant property.
  - d. Comparing the mass appraisal assessments from 2014 (where he did not have actual lease information) to 2015 (where he did have the actual lease numbers) it turns out that Mr. Land's calculations were almost identical. This means that Mr. Land did an excellent job in 2014

setting the assessment with little to no actual information. The 2015 assessment only proves that his 2014 assessment was very accurate.

- e. Sherwood incorrectly argues that in 2014 Mr. Land admitted market rent was \$22.75, meaning that that the contracts rents for the Sherwood property are above market. The \$22.75 number was not a determination of market rent. It simply was a number that was derived in his calculations using the best information he had practicably available. He had the luxury in 2015 to know the contract rents. He was able to determine they were at market by looking to the range of rents being paid in the market.

199. The Court finds that the individual details of Mr. Land's mass appraisal are of no consequence given that the assessments are 99% of the sale price and therefore are not excessive. *Metropolitan*, ¶140. Thus, whether (1) the capitalization rate should be 6.5% or 6.75%; or (2) the rental rate should average \$22.75 per sq. ft or \$25 per sq. ft.; or (3) the total square footage of 22,500 or 23,952 are of no consequence because the market value is established by the sale price and the assessment is 99% of the sale price. Sherwood's arguments that the assessments are invalid because of any differences between actual and estimated numbers should be disregarded by the Court.

#### **Two Factors to Determine Whether a Sale is Valid to Determine the Value of the Property in a Tier 1 Analysis**

200. There are two factors that go into determining whether a sale of a subject property is valid for determining the value of the property: (1) whether the sale is an arm's length sale and (2) whether the sale conforms to sales of recent arms-length sales of reasonably comparable properties.

If there is a recent arm's-length sale of the property and, according to professionally acceptable appraisal practices, the sale conforms to recent arm's-length sales of reasonable comparable property it is error for the assessor to look to other information to value the property. Wis. Stat. §70.32(1); *Waste Management of Wisconsin, Inc. v. Kenosha County Board of Review*, 184 Wis. 2d 541, 556-557, 516 N.W.2d 695 (1994).

201. The sale of the subject property was an arm's length sale as it met all five conditions set forth in the Manual to qualify as an arm's length transaction: (Exhibit 10, Manual at 7-8)

- a. The buyer and the seller were typically motivated.
- b. Both parties are well informed or well advised and acting in what they consider their own best interests.
- c. A reasonable time was allowed for exposure in the open market.

- d. Payment was made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.
- e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

202. The Plaintiff has the burden to demonstrate that the sale of the subject property was not an arm's length transaction.

203. The Plaintiff and its expert, Mr. Watson, had unfettered access to the owner of the property; whereas the City had no access except through formal discovery. Mr. Landretti reviewed Mr. Watson's report to see what additional information he might have in light of his access to the property owner. The recognized this at trial stating:

**The Court:** Do you look at Mr. Watson's report in part because he was working directly with the property owner and so the presumption would be that he would have had better access than you?

**Mr. Landretti:** Correct. That's the reasons why I would look at it because he would have the ability to talk with the property owner ... (Day 4, p. 57)

Despite this access to the property owner, the Plaintiff has not provided any factual support to demonstrate the absence of any of the five factors listed above to be an arm's length sale.

204. Mr. Jennaro had no information to support any contention that the sale was not an arm's length transaction. (Exhibit 411, p.7, Interrogatory #8)

**The Plaintiff has not met its burden of proof to show the sale of the subject was not an arm's length transaction.**

205. Mr. Watson provides the following statement in his report pertaining to the sale of the Sherwood Property:

The subject property sold in September, 2013 from Lilly/North Development partners, LLC to Sherwood Manor VI, LLC. The seller is a knowledgeable commercial real estate investor. The buyer is not considered a knowledgeable commercial real estate investor. Additionally, the buyer was motivated to complete a like kind exchange.

The reported purchase price for the transfer September, 2013 was \$7,613,069. The buyer purchased the leased fee interest in the real estate. At the time of the sale, the contract rents were above current market rents. The sale in September, 2013 is not representative of the fee simple market value of the subject. To the knowledge of the appraiser, no other sales of the subject property have transpired in the last three year.

(Exhibit 17, p.9)

206. Mr. Robert Watson rejects the sale out of hand with no investigation of the sale transaction itself and dismisses the sale price as above market because Watson:

- a. determined the Sherwood rents under the leases are above market and have been since inception in 2007 because the “Great Recession” occurred shortly after signing. Mr. Watson has no authority for his opinion that the market for medical office buildings are affected were ever or continue to be affected by the great recession. Exhibit 356 received at trial provides information to the contrary and states, “medical office buildings are recession resistant investments”;
- b. believes Mr. Jennaro was not savvy enough to understand he overpaid, even though Mr. Jennaro was well advised through the assistance of top notch professionals including a broker, CPA, banker and lawyer (the Reinhart firm) who advised him every step of the way and never told him the Property was priced above market; (Ex. 411)
- c. believes the Sherwood Property was not “on the market” for sale even though the Property was sold through a broker, Mr. Sam Dickman, a person Mr. Watson never bothered to contact. Mr. Landretti contacted Mr. Dickman who stated in writing the sale was a market transaction (Ex. 305) ; and
- d. believes the Financing Appraisal that values the Property at nearly the sale price and was used to fund the purchase of the Property should be disregarded because it values the *leased fee* and not a *fee simple* interest. The Financing Appraisal specifically states that the Sherwood rents are within market levels thus making the fee simple and leased fee value the same.

207. Mr. Watson concluded that the purchase price of the 2013 sale of the Property represented the *leased fee interest* in the real estate, not the *fee simple interest*. Watson explained that the Property was “subject to leases so he purchased the actual leases.” (Ex. 17, p.9) (Day 2. p. 235)

208. As a result, Mr. Watson concluded that the 2013 sale of the Sherwood Property did not represent the market value of the *fee simple* value of the Property. (Day 2, pp. 233, 239-240)(Ex. 17, p.9)

209. Mr. Watson testified that the principle of substitution stands for the proposition that “nobody would pay more for a property than what it costs to replace it.” (Day 2, p. 237)

210. Mr. Watson speculated that based on his calculations, the cost to replace the Sherwood building and purchase suitable land, the cost would approximately \$5,000,000 to replace the property. Because the sale price of \$7,613,069 was higher than Watson's estimated replacement cost new \$7,613,069 for the Property, it led Mr. Watson "to believe that there was something else purchased than just the land, the land improvements, and the building." (Day 2, pp. 236-237)(Ex. 17, p.9.)
211. According to the Manual, the premise of the principle of substitution is that a prudent purchaser will pay no more for a property than the cost of building an equivalent structure, or purchasing an existing property with similar utility or income generating capacity. Manual, 7-13. (Exhibit 10-14)
212. The principle of substitution has applied to the Plaintiff's purchase given that if a property of similar utility or income generating capacity did in fact exist for a lesser price, Sherwood would have purchased that property for a smaller price. Given that did not happen, the Court finds that the price paid for the subject property reflects its market utility and income generating capacity.
213. Mr. Watson explained that "at that point I realized that there's something else that the buyer purchased, some intangible asset beyond just the replacement cost of the land and buildings." So at that point, he also looked at the income approach. (Day 2, pp. 237-238)

### **Watson's Opinions and the Five Conditions of An Arm's Length Sale**

#### ***Factor 1***

#### ***The Buyer and The Seller Where Typically Motivated***

214. Mr. Watson testified that Mr. Jennaro was not atypically motivated to purchase the Sherwood Property because of the time limitations of completing a 1031 exchange. (Day 3, p.188)
215. Although Mr. Watson noted in his appraisal report that Mr. Jennaro was motivated to complete a like kind exchange under IRC 1031, Mr. Watson conceded that this did not impact the purchase price. (Day 3, p. 202)
216. Watson further testified that he did not review any of the documents pertaining to the 1031 exchange, but did have conversations with Mr. Jennaro about it. In his conversations with Mr. Jennaro, Mr. Jennaro never informed Watson that the 1031 exchange affected the sale price, causing it to be above market. (Day 3, p.202)

217. The Court finds that although Mr. Jennaro was motivated to purchase a replacement property to achieve capital gain tax savings he was not atypically motivated such that the it affected the purchase price of the Property..

**Factor 2**

***Both parties are well informed or well advised and acting in what they consider their own best interests.***

218. Watson testified that he found that the seller was a knowledgeable commercial real estate investor because of his general knowledge of Irgens being active in the commercial real estate market. Watson also testified that he found that the buyer was not a knowledgeable commercial real estate investor. Mr. Watson based this conclusion on his discussions with Mr. Jennaro when completing his report. Watson identifies this issue as one of the reasons he believes the Sherwood sale was not arm's length. Watson believes that Mr. Jennaro was not on an equal level with the seller who was "extremely knowledgeable in the sale of commercial real estate." (Day 2, pp. 233-234)

219. Mr. Watson acknowledged that Mr. Jennaro had been represented by four different parties that provided advice to him in the course of acquiring the Sherwood property. This included, a commercial real estate broker, the Reinhart law firm, a banker and his CPA. (Day 3, pp.183-184)

220. There is no evidence in the record to indicate that the four professionals Mr. Jennaro hired to advise him, failed to fulfill their professional responsibility, including the Reinhart law firm, so represented him in that sale as well as in this case.

221. Watson testified that he had no evidence that Mr. Jennaro was duped into paying too much. (Day 3, p. 182)

222. Mr. Watson further testified that he did not know if Mr. Jennaro was well advised by the four professionals he hired to represent him in the purchase of the Sherwood property. (Day 3, p. 185-186)

223. The Court finds that Mr. Jennaro is otherwise a savvy businessman, having built his own business from the ground up. Mr. Jennaro was smart enough to know that in a significant commercial real estate transaction such as this one, he needed the guidance and advice of professionals. For this reason, he retained a real estate broker, an attorney, a banker and a CPA all to assist and advise him in this real estate transaction. Mr. Jennaro was not in over his head, he had competent professional advisors to advise him.

224. The Court finds that by failing to address whether Mr. Watson was well advised in this real estate transaction, Mr. Watson has not addressed and therefore has no opinion as to whether Mr. Jennaro was well informed **OR** well advised in the purchase of the Sherwood property.

#### **Factor 4**

##### ***A reasonable time was allowed for exposure in the open market.***

225. At trial, Mr. Watson acknowledged Mr. Jennaro was represented by a broker. The property was clearly for sale and thus “on the market” through the broker. The element that a property be exposed to the open market does not apply when a party is attempting to prove a sale price is above market, rather than below market.

226. Based on the *N/S Associates* case lack of time of the open market does not result in a sale price that is too high, it only has the potential to result in a sale price that is too low. *N/S Associates v. Board of Review of Village of Greendale*, 164 Wis. 2d 31, 47, 473 N.W. 2d 554.

227. The Court of Appeals rejected the argument that inadequate exposure to the market can result in the price being too high. The Court held:

*N/S Associates* next contends that the mall was not sufficiently exposed to the market prior to sale. As the Village points out, however, this argument is a dead-end in logic: implicit in the argument is the contention that if the seller of Southridge had not dealt with JMB but, rather, had either stayed with the New York investment banker or had attempted to market the mall in some other way, the price would have been *lower* ! Clearly, the requirement that property be “exposed to the open market for a period of time typical of the turnover time for the type of property involved,” *Assessment Manual* at 7–3, is to insure that the property is sold for as *high* a price as possible so that the taxing authority is not short-changed by a low price resulting from an owner’s rush to sell.

*N/S Associates*, at 47

228. Mr. Watson does not know whether the property was exposed to the open market or not. (Day 3, p. 189-192)

229. Mr. Watson admits that the broker, Sam Dickman, told Mr. Jennaro that the property was for sale. (Day 3, p. 189)

230. Mr. Watson testified that a property is exposed to the open market where a seller informs a broker that the property is for sale and that broker tells others that it is for sale. (Day 3, p. 190)

231. Mr. Watson does not know if Mr. Dickman told anyone else if the property was for sale. (Day 3, p. 190)

232. The Court finds that Mr. Watson’s opinion that the property was not exposed to the open market is not credible because Mr. Watson did not know who had been told that the property was for



sale. Also, the Sherwood Property was exposed to the open market because a broker paid a commission by the seller was involved.

#### **Factor 5**

#### ***The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale***

233. No witness at trial testified that the 1031 exchange had any effect on the sale price; thus Plaintiff's argument in its brief that the 1031 exchange results in this sale not being at arm's-length, is wholly unsupported in the record. (Day 4, pp. 60-61)

234. Nor had Mr. Jennaro informed Mr. Watson that the purchase price was pushed above market value because the property was purchased as a replacement property to close out a 1031 exchange. Mr. Watson testified: (Day 4, pp. 60-61)

**Seibel:** And did he tell you that the 1031 exchange impacted the price, and he paid above market because of it?

**Watson:** He didn't state that, no.

#### **The City Has Demonstrated That the Sale of the Subject Property Was an Arm's Length Transaction.**

235. While the City does not bear the burden of proof on this Issue, The City has demonstrated that the Sherwood purchase was an arm's length transaction.

236. Mr. Landretti testified that his investigation of the sale determined that the sale was an arm's length transaction and met all five factors of an arm's length sale per the Manual. Mr. Landretti testified that the broker, Mr. Dickman, informed him that the sale price for the property represented market value and that that sale was arm's length and a straight forward transaction. (Ex. 305, Day 4, 19-20)

#### **Factor 1**

#### ***The Buyer and The Seller Where Typically Motivated***

237. Mr. Jennaro was typically motivated because he was looking for a property that was close to home. In his conversation with Mr. Dickman, Mr. Landretti learned that Mr. Jennaro liked the property and liked the location. (Day 4, p. 62-63) This is consistent with Mr. Jennaro's testimony that he wanted a property that he could drive to.

**Factor 2**

***Both parties are well informed or well advised and acting in what they consider their own best interests.***

238. Mr. Landretti testified that Irgens, the seller, is a very active development brokerage company in the Milwaukee market. They are well informed on the property. Mr. Jennaro, the buyer, had a number of advisors in this transaction that he relied upon, thus making him well informed as well. Jennaro understood what he was getting into. (Day 4, pp. 62-63)

**Factor 3**

***A reasonable time was allowed for exposure in the open market.***

239. Based upon his conversation with Dickman (See Exhibit 305), the broker knew the buyer and got him together with the seller. Mr. Dickman confirmed that had the property been marketed, it would have gotten a similar price. He also stated that the property would have sold for a similar price despite the 1031 exchange. (Day 4, pp. 64-65) Mr. Landretti testified that it is common with commercial properties for brokers to market properties by word of mouth, rather than a formal listing. (Day 4, pp. 65-66) The fact the buyer paid the asking price indicates that Jennaro believed the price to be at market value. Plus, Mr. Jennaro was represented by a broker, Mr. Dickman. As a licensed broker, Mr. Dickman is under an obligation to obtain the best price for his client. (Day 4, pp 67-68)

240. Mr. Landretti explained that the purpose for the requirement that the property be exposed to the open market is to insure that the price is not too low. Exposure to the open market and multiple buyers insures that a property has every opportunity to sell for the highest price possible. Thus no argument can be made that lack of exposure to the open market would result in an above market sale price. (Day 4, pp. 68-69)

241. Mr. Landretti further explained:

So, meaning that when a broker tells you it's not marketed, in my interpretation, it may not be actively being listed with some sort of flyer or some sort of notice but there is a word of mouth out there that spreads like wildfire with brokers. So, this property was available for sale, at least according to what I reviewed from Mr. Dickman. (Day 4, p. 65)

**Factor 4**

***Payment was made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.***

242. Based upon the closing statement and the financing appraisal secured by the bank, Mr. Jennaro paid for the property with cash and a traditional mortgage. This is a normal cash equivalent transaction. (Day 4, pp. 69-70)

### **Factor 5**

***The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.***

243. Landretti testified that factor 5 was satisfied because there was no creative or special financing based upon the information contained in the financing appraisal, there was a lender involved, there was a loan that was below the sale price meaning there was equity involved, and there were no sales concessions granted by anyone associated with the sale. Mr. Landretti also testified that the leases at the time of the sale were not above market; the leases were within a reasonable market range, and therefore did not cause an artificial inflation in the sale price. (Day 4, p. 74)

244. Landretti opined that the sale price was not atypically impacted in any way. Mr. Dickman indicated to Mr. Landretti that the 1031 exchange had no effect on the sale price. Mr. Landretti further pointed out that he was present in the courtroom to hear both Mr. Jennaro and Mr. Watson testify that there was nothing unusual about the fact that this sale was part of a 1031 transaction. (Day 4, pp. 60-61)

245. No one at trial testified that the purchase of the Sherwood property as part of an IRC 1031 exchange had any effect on the sale price.

**The Second Test In Determining Whether the Sale of the Subject Property is Valid to the Determination of the Market Value is Whether the Sale Conforms to Sales of Other Reasonably Comparable Properties.**

**Sales of Reasonably Comparable Property That Comport To The Tier 1 Sale**

246. Mr. Landretti explained in his appraisal report: "In accordance with the Wisconsin Property Assessment Manual, recent sales of the subject property must be considered by the assessor if the sales are arm's-length and conform to recent arm's-length sales of reasonably comparable property. Sale 1 was the arm's-length 2013 sale of the subject property and is considered a good indicator of value as the sale price conforms to recent arm's-length sales of reasonably comparable property." (Exhibit 301, p. 51)

247. In completing his appraisal, Mr. Landretti explained that as there was a sale of the subject property, the law - Wis. Stat. §70.32(1) - requires him to look at the sale as a Tier 1 analysis and therefore that is where he started. First he determined if the sale of the subject was an arm's-length sale and if it was, then he looks at whether the sale conformed to sales of reasonably comparable properties. (Day 4, p. 40-41) In addition, Mr. Landretti determined whether the actual rents that were

being paid at the time of sale approximated market rents, as part of his analysis to determine whether the sale was an arm's length transaction. (Day 4, p. 41)

248. If there is a recent arm's-length sale of the property and, according to professionally acceptable appraisal practices, the sale conforms to recent arm's-length sales of reasonable comparable property it is error for the assessor to look to other information to value the property. Wis. Stat. §70.32(1); *Waste Management of Wisconsin, Inc. v. Kenosha County Board of Review*, 184 Wis. 2d 541, 556-557, 516 N.W.2d 695 (1994).

249. The court of appeals in *Great Lakes*, 2011 WI App 7, held that pursuant to Wis. Stat. §70.32(1), an appraiser who uses the sale price of the subject property to determine the value of that property, must also confirm that the sale price conforms with the sales of other reasonably comparable properties.

As required by Wis. Stat. § 70.32(1), the City also considered the recent sales of several comparable automotive service facilities to determine whether it had correctly concluded that the sales prices CRIC reported represented arm's-length transactions. Based on the reported recent sales of the subject properties, and of comparable properties, the City concluded in the Retrospective Appraisal Reports that the subject properties had the following fair market values as of January 1, 2006 and 2007 ...

As required by Wis. Stat. § 70.32(1), the City verified the arm's-length nature of the transactions and considered recent sales of comparable properties. *Great Lakes*, 2011 WI App 7, ¶ 25-26.

250. The Manual defines comparable sales as: "*Comparable sales refer to properties that are similar to the subject property in age, condition, use, type of construction, location, design, physical features and economic characteristics. The more similar the sold property is to the subject, the more reliable is the sale price as an indicator of the value of the subject property.*" (Manual at 7-25, Exhibit 10, p.26)

251. The Manual emphasizes the importance of location on value, "*The primary factor influencing property values is usually its location. This is especially true of commercial property where even the side of the street on which a property is located is important. Location can affect the net return the property can generate and thereby influence demand. A higher net return will generally translate into higher market value. In analyzing location, the assessor should note the location of competitive properties, and other factors which affect the property value due to its location*" Manual at 9-5. (Exhibit 11, p.6)

252. The Manual also states that, “*For commercial property, value is dependant upon both the physical characteristics of the property and the ability to generate income.*” Manual at 9-6. (Exhibit 11, p.7)
253. According to the Manual, “*To be comparable, properties should be similar in both physical and economic characteristics including similarities in the ability to generate income and/or similar income streams.*” Manual 9-12 (Exhibit 11, p. 13)
254. The Principle of Substitution is predicated on the principle that similar properties will sell for similar prices on the open market. The principle of substitution provides that, “a buyer will pay no more for a property than the cost of acquiring a substitute property of ***equal desirability and utility.***” (Emphasis Added) Manual 7-25 ( Exhibit 10, p.26)
255. “The amount of adjustment must be reflected in sales data and not just a “guess” on the part of the assessor.” Manual 7-23, (Exhibit 10, p. 24) Mr. Landretti considered medical dollars spent in each location to evaluate the comparability of each property.
256. The Court finds Mr. Landretti followed the Manual in the selection of reasonably comparable sales used in the tier 1 analysis and has demonstrated that the Sherwood sale price conformed to the sale prices of reasonably comparable property.
257. The court of appeals in *Great Lakes* held that statements made on a Wisconsin Real Estate Transfer Return are admissions of fact. *Great Lakes*, ¶26.
258. Like the property owner in *Great Lakes*, in the case at bar Sherwood reported the sale price of the real estate on a Wisconsin Property Transfer Returns as did all of the parties to the portfolio sales.
259. Sherwood has not demonstrated why the Court should ignore these admissions of fact. *Great Lakes*, ¶26.
260. The Transfer Tax Returns have a strong credibility and reliability because those who make the statements in the returns and sign the returns are subject to fines or jail. Wis. Stat. §77.27.
261. The Manual provides, “When RETRs [Real Estate Transfer Return] of portfolio sales are analyzed and it is determined that the transfer of the real estate was at market values as reflected by recent arm’s-length sales of comparable properties those sales can be used in a sales comparable analysis or in a sales ratio study.” Manual, 14-5. (Ex. 12, p. 6)
262. Mr. Landretti reviewed the Real Estate Transfer Returns (RETR) of the sales relied upon:

- a. The RETR of the Sherwood Property was received as Exhibit 307
- b. The RETR of the 1350 S. Sunnyslope Property was received as Exhibit 308
- c. The RETR of the 21700 Intertech Property was received as Exhibit 309
- d. The RETR of the 2315 East Moreland Property was received as Exhibit 310
- e. The RETR of the 4475 S. 108th Street Property was received as Exhibit 311.

263. Mr. Landretti confirmed with the broker Stan Johnson on the portfolio sales that (1) the portfolio sales were arm's length; (2) the properties would have obtained a similar selling price if sold separately; (3) there were other offers of interested parties at similar price points; (4) the leases for the buildings were at market terms; and (4) there were not any unusual circumstances regarding the transaction. (Ex. 306)

### **Fee Simple Determination of Value**

264. The *Marathon Petroleum* court specifically held that when determining the value of an income producing property the appraiser must include the income producing potential of that property in its valuation. *Marathon*, ¶¶46-47.

265. The Manual states, "*The first step in the appraisal process is to identify the bundle of rights associated with a particular property. All future steps in the process will require the assessor to keep these in mind when selecting sales and analyzing data to be sure that an apples-to-apples comparison is being made. In this way, equity among assessments (property owners) is enhanced.*" (Manual at 7-22, Exhibit 10, p. 23)

266. Any sale price of a property containing a lease that is at market rates is also a sale price that reflects the fair market value of the property. *Great Lakes*, ¶ 27.

267. The Manual includes a similar requirement:

A transaction price is always predicated on the real property rights conveyed. The assessor must identify the real property rights available to be conveyed in the subject as well as property rights actually conveyed in each sales transaction selected for analysis. Many types of real estate, especially income producing property, are sold subject to existing leases. The revenue generating potential is often fixed or limited by the terms of existing leases. Leases are part of the bundle of rights. The effect of long-term leases on the bundle of rights, inasmuch as the leases affect market value, should be reflected in the valuation of the property. The transaction price of a property sold subject to existing leases reflects the contract rent it will generate

during the term each lease and the market rent that will likely be achieved thereafter. Manual, 7-27 (Exhibit 10, p.28)

268. Where a lease is at market rents, the leasehold interest is the same as the fee simple interest; meaning where contract rents are at market levels, the sale price is also at market levels. *Walgreen Co. v. City of Madison*, 2008 WI 80, ¶10, fn. 5 and ¶84, 311 Wis.2d 158.

269. When the contract rents of a leased property that is sold are at market levels, the value of the leased fee interest is the same as the value of a fee simple interest. In such cases, the contract rents do determine the fair market value of the fee simple estate. *Walgreen*, ¶ 84.

270. This appraisal principle is also reflected in the Manual where it states:

The market value of a leased fee interest in a rental property generally depends on how the contract rent relates to market rent. If the contract rent is at the same level as the market, the leased fee interest has the same value as a fee simple interest. In this case, the leasehold has no value. Manual 7-38, (Exhibit 10, p. 39)

271. Based on *Walgreen* and other case law as well as the Manual, Landretti concludes, "For the subject, the property is encumbered by one or more leases, and contract rent was found to be within the range of market rent. If the contract rent is at the same level as the market, the leased fee interest has the same value as a fee simple interest. In this case, the leasehold interest has no value." (Exhibit 301, p.6) (Day 4, p. 80)

272. Therefore, Mr. Landretti properly concludes to the fee simple value of the Sherwood Property.

273. Sherwood cites to two unpublished decisions, *Walgreen vs. City of Oshkosh* ( 2013-AP-2818) and *CVS Pharmacy Inc. v. City of Appleton* (2015-AP-876 ) for its persuasive value in support of its position.

274. Sherwood's citations to unpublished court of appeals decisions are not binding on this Court and pursuant to statute, the Court will not address those decisions here.

**(3) Citation of unpublished opinions .** (a) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).

(b) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under s. 752.31(2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. **Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.**

(c) A party citing an unpublished opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited. Wis. Stat. § 809.23(3).

### Landretti's Determination of Market Rent

275. Mr. Landretti's opinion that Sherwood Manor's leases are at market rates is credible and supports his opinion that the sale price is an arm's length market transaction that was not affected by any creative financing or any other condition that would otherwise elevate the sale price above market value.

276. Landretti opines that there were no above market leases that would have pushed the sale price above market. (Day 4, p. 74)

277. Mr. Landretti's report shows that he compared the subject property rents of the 3 tenants to the rents of 8 other reasonably comparable properties in the area. (Exhibit 301, p. 36) The properties in the graph shown in his report on p. 301-36 are all properties that are being paid in the market and all compete in the same market and the subject rents. As can be seen in the graph the three rents for the subject property all fall within the range of rents of other medical office building properties in the area. (Day 4, p. 74-75; Exhibit 310, p.36) Landretti states in his report "As shown, the subject rent falls within the range of similar market rents identified in the marketplace. As such, the contract rent of the subject is reasonable to comparable market rents and is a market rent." (Exhibit 301, p. 36)

278. Mr. Landretti compared the subject rents to the rents from 2 medical office buildings in Brookfield; and medical buildings located in Waukesha; Menomonee Falls; Mequon; Germantown; Greenfield and Jackson. The rents ranged from a low of \$21 per. sq. ft. (Germantown) to a high of \$28.20 (Waukesha). (Exhibit 301, p. 36)

279. The subject property rents of \$23.82 (Children's Hospital) and \$24.50 (Affiliated Dermatologists) and \$26.27 (Greater Milwaukee Plastic Surgeons) all fit within the \$21 to \$28 range of the market. (Exhibit 301, p. 36)



280. Mr. Landretti testified that there is not one number that shows the market rent for all medical office buildings in the area. Rather there is a range of contract rents that make up a market. (Day 4, p. 75-76). Contract rent should always be considered within a range because different circumstances are at play for each different property that will cause variations to occur. These various contract rents of similar properties then make up the marketplace from which a determination of market rent can be made. (Day 4, pp. 75-76)

281. Given that the contract rents for the subject property fall within the range of contract rents of similar properties, that make up the marketplace, Landretti properly opines that the contract rents are "within a reasonable market range." (Day 4, p. 74).

282. None of the rentals considered by Mr. Landretti had fixed rental terms. All had rent escalation clauses, none were fixed rents. Any concern about fixed rents from long term leases is not applicable to the rental comparables considered by Landretti.

283. Thus, the year the lease commences is not a concern for older leases, where there is a rent escalation built into the lease to provide for increases in rent over time automatically. Thus the lease accounts for the increase in value to the property over time by including an automatic rent increase over the years. Therefore the fact that a lease, for example, commenced in 2001, was not of consequence to Landretti's opinions, because medical office leases contain rent escalation clauses to keep the rents at market levels. (Day 4, p. 77)

284. Landretti got some of his rent comparables from Mr. Stiloski's financing appraisal. Stiloski obtained his contract rent information from appraisals he did on those properties. (Day 4, p. 79) The rents from the Broadstone comparable properties were known to Landretti because he had conducted appraisals for those properties.

285. Mr. Landretti testified that his understanding of the Financing Appraisal, (Exhibit 427) the appraiser, Mr. Stiloski opined that the contract rents being paid at the Sherwood Property were within market levels. Mr. Stiloski was able to make this finding because he did appraisals for some of the properties used as comparable rentals and therefore was able to do the proper market rent analysis. Therefore, Mr. Landretti testified because the subject rents used in the Financing Appraisal were within market rates, the *leased fee* value conclusion in the Financing Appraisal in the amount of \$7,640,000 is the same as a \$7,640,000 *fee simple* value for the Sherwood property. (Day 4, p. 79-80)

286. The Sherwood Financing Appraisal states, "The current market for medical space rents from a low of \$12.89 per square foot , triple net to a high of \$28.20 per square foot, triple net. The average triple net rental rate for medical space is \$22.52 per square foot, triple net. The subject's average

triple net rental rate is about \$24 per square foot. Given the subject's age and location it is reasonable to assume that a rental rate slightly above the average observed in the market is applicable to the subject's space." (Exhibit 427, p. 88) Mr. Landretti understands this to mean that the Sherwood rents are typical and are at market levels based on the analysis in the financing appraisal. The financing appraisal analysis shows that the contract rents associated with the subject are within the market range. (Day 4, p. 72)

### Watson's Determination of Market Rent

287. Mr. Watson's opinion that the Sherwood Manor leases are above market, is not credible and is not supported by any market data properly adjusted to the conditions of the subject property.

288. This Court need not accept the *ipse dixit statements* of an expert. *Marathon Petroleum*, ¶152. As such, this court declines to accept any of Mr. Watson's conclusion and opinions that are not supported with actual data.

289. Mr. Watson had the Sherwood Financing Appraisal in his workfile, but did not use any of those rents in his report. He testified that he did not know why he didn't use any of the Stiloski rents. (Day 3, p. 130-136; Exhibit 427)

290. Watson opines that there is just one market rent for all medical office building properties, rather than a range of rents. He testified:

**Seibel:** Okay. Is it your opinion that there is just one dollar amount that is the market rent in any community for a type of property? So, is it your opinion that the market rent for a medical office building in Brookfield is \$20?

**Watson:** That's my opinion. A point estimate, you know, an appraisal, you always work within a range, you've always got information within a range. So as a point estimate, yes, that's -- that's my opinion. (Day 3, pp. 136-137)

291. However, of the four properties Watson considered three are asking rents of vacant properties, and the fourth rent was taken from a sale property where Watson had no lease or other pertinent information. While Watson states in his report (Ex. 17-74) that he intended to review rents of similarly *leased* properties to determine "economic"<sup>1</sup> rents, none of his 4 "similar competitive medical office space" buildings are actually similar to the subject Sherwood property.

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<sup>1</sup> Notably, Mr. Watson concludes to an opinion of value on "economic" rent not "market" rent. (Exhibit 17-85)

- a. Watson's first "similar" property was an asking rent in 2016 for a building that was not even in existence for the years at issue. Because it was still under construction, there were no actual rents for Mr. Watson to analysis, so he used the 2016 "asking rent" for that property. Mr. Watson however, had no understanding as to what the "asking rent" included. So he did not know if the landlord or tenant would be paying for the tenant improvements once the building was constructed nor did he know the term of the lease for the asking rent. Watson had no understanding of whether the partially constructed building and asking rent had any of the same characteristics or component as the Sherwood property leases.
- b. Watson's second "similar" property is located on the South side of Milwaukee. This is the only property Watson uses that had actual leases. Watson did not have a copy of the lease however; to determine the rent he simply did the math using the sale price and cap rate to come up with a rental rate of \$18.60 per square foot. Again, Watson has no understanding of what the terms of that lease contained.
- c. The third property is an asking rent for dental office space that is empty and not leased. Thus the rents used are not actual market rents but rather are "asking rents." Moreover, dental office space is very different from medical office space as dentists typically require large open space in which to put a number of dental chairs for patients.
- d. Watson's final property is another asking rent, in the City of Wauwatosa for a multi-story medical office building previously used physicians of the defunct Heart Hospital. (Ex. 452-11, pp. 18) Again because it is only an asking rent, Mr. Watson had no understanding of what the terms of the rent that might affect the rent rate, might be.

292. Based upon these asking rents, Watson makes a number of admittedly subjective adjustments to come to a single "economic rent" of \$20 per sqft. He reaches these conclusions without any knowledge of the specifics of what any of the actual leases will ultimately contain.

293. With all of these unknowns, Mr. Watson's conclusion to a one size fits all "economic" rent of \$20 per sqft, lacks in credibility.

294. While using asking rents in his analysis, Mr. Watson was aware of a number of actual rents in the area. Mr. Watson's workfile contained excerpts from the Sherwood Financing Appraisal, which included actual contract rents from *leased* medical office buildings located in Jackson, Kewaskum, West Bend, Greenfield and Waukesha. (Ex. 456, pp. 182-186; Ex. 427, pp. 78-83)

295. The actual rents Mr. Watson ignored from the Financing Appraisal ranged from a low of \$18.67 to a high of \$28.20 sq. ft. (Ex. 456, pp. 182-186)

296. Mr. Watson ignores readily available actual rents even though he states in his report that rents from leased properties are what he intended to consider. When asked at trial why he did not use the Sherwood Financing Appraisal rents, Mr. Watson responded that he didn't know why. (Day 3, p. 130-136; Exhibit 427)

297. There is no mention anywhere in Mr. Watson's report of any Sherwood tenant wanting to renegotiate their rent.

298. Mr. Watson's opinions do not per se constitute significant contrary evidence because he has not followed the tier 1 valuation hierarchy of §70.32(1). Watson has failed to recognize the 2013 sale price as market value of the Property. *Great Lakes*, ¶18 ("An opinion as to value which ignores the statutory factors is not "significant contrary evidence" necessary to overcome the presumption that the assessment is valid. See *Adams*, 294 Wis.2d 441, ¶¶ 25–26, 717 N.W.2d 803")

299. Watson's opinions that the sale of the subject property is not a valid tier-1 sale to represent the market value of the subject property are rejected as follows:

1. Mr. Jennaro was typically motivated: Watson himself testified that a 1031 exchange does not render a sale not arm's length.
2. Mr. Jennaro was well informed and well advised in the purchase of the subject: Mr. Jennaro was represented by four professionals in the sale of the Sherwood property. He was a savvy businessman who had previously purchased and sold income generating real estate and knew enough to hire professionals to advise him in the purchase. Mr. Jennaro's use of highly qualified professionals demonstrated that he was well advised in the purchase.
3. The property was sold through a professional real estate broker who said other parties were also interested in purchasing the Property.
4. Mr. Jennaro paid cash for part of the purchase and obtained a standard real estate mortgage to pay the balance for the real estate.
5. The sale price was unaffected by any creative financing. There is no evidence that the purchase price included anything other than real estate. The subject property rents were well within the market rent range for similar properties.

#### **Rent Information Relied Upon By Assessor**

300. The assessor was not given copies of the Tenant leases when the 2014 assessment was set. The assessor had requested copies of the leases but the representative for the Plaintiff failed to give the leases to the assessor until just a few hours before the 2014 Board of Review hearing leaving

no time for the assessor to take the leases into account before the Board of Review presentation received at trial as Exhibit 20. (Day 1, p. 156)

301. Mr. Land testified he considered ranges of medical office rents being paid by medical office building tenants in his analysis of market rent. He looked at many things before he concluded on a value. (Day 1, p. 95) Some of information he relied upon includes:

- a. Local medical office building rents as provided by Mr. Stiloski of Commercial Property Consultants that showed a range of 8 comparable rents in a range of \$21 to \$28 per sq. ft. (Ex. 29, p. 14) The assessor spoke on several occasions with Mr. Stiloski about the market rent information he had gathered. (Day 1, p. 89) Mr. Land found the rents to be reliable and he trusted the source. (Day 1, p 97) Further, Mr. Stiloski had appraised a number of the properties so the information came from him getting the information directly from the owners. (Day 1, 194-195)
- b. Comparable property rents from other assessors in nearby communities who reported the following market rent ranges on a per sq. ft. triple net basis: (Day 1, pp. 196-197) (Ex. 31, p. 1)
  - i. Wauwatosa - Range from low \$20's to upper \$30's
  - ii. Waukesha - Range from up to \$30 sq. ft. (did not receive a low end of the range)
  - iii. New Berlin - Range from in the low to mid \$20's
  - iv. Milwaukee - Range from \$8 to \$59 with the majority falling into the \$13 to \$23 range, depending on the neighborhood.

302. Mr. Land also spoke with brokers and appraisers in his research of market rents. He speaks with appraisers on a regular basis. (Day 1, 197-199) Mr. Land asks for copies of leases in his discussions with assessor and brokers but they are often reluctant to provide copies due to confidentiality concerns (Day 1, pp. 199-200)

303. The Manual states that differences between contract rent and market rent may occur due to "changes in market conditions since a multi-year lease was signed." Even though the Tenant leases were signed before the "Great Recession" that began in 2008 the assessor testified all properties were not affected in the same way as a result of the recession. (Day 1, p. 216)

304. Mr. Land testified that office vacancies during the recession went from between 5-7% down to between 25-30% in Brookfield. Yet the medical office buildings were just the opposite and vacancies declined. (Day 1, p. 216)

305. In the course of Mr. Land's duties, he regularly reviews articles to have an understanding of the medical office building market. (Day 1, p. 214)

306. Mr. Land testified he “spent an incredible amount of time getting to understand the medical office buildings and what’s been going on more recently, just to understand what’s really going on more recently, just to understand what’s really going on as far as investments, sales prices, and really what’s, you know, what creating this -- the change in the market.” (Day 1, p.213)
307. Some of the articles Mr. Land reviewed he shared with the Board of Review as part of the 2014 board proceedings. The articles are contained in Exhibit 19 which was received at trial. (Day 1, 213)
308. The assessor understood the medical office industry when he set the assessments. He took into account the following medical office market information he researched as part of his revaluation of all medical office buildings in his mass appraisal.
- a. “During the recession, investors came to realize that income producing qualities of this class of real estate are very stable. This is driven principally by the fact that you have physicians and hospitals in long term leases, and they tend not to move.” (Exhibit 29. p.2)
  - b. Under the Patient Protection and Affordable Act, signed into law in 2010, 32 million additional Americans will have health insurance. This represents an 11% increase by 2019. (Exhibit 29, p.15) The assessor testified that with an aging baby boomer population and Obamacare coming into law, the demand for medical office space has increased, not decreased. (Day 1, p. 216)
  - c. A new model of healthcare health systems are embracing is also creating demand. Health providers are migrating to a hub and spoke model which hinges around outpatient care. By acquiring and constructing medical facilities like advanced imaging centers, physician offices, and satellite emergency departments, health systems can strategically coordinate a network of support to cater to the needs of their community. (Exhibit 29, p.15) (Day 1, p. 217)
309. The assessor also conducted other research of articles involving the medical office real estate industry. Mr. Land relied upon the articles contained within Exhibits 356, 357 and 358 in determining the assessments of medical office buildings in Brookfield, including the subject. (Day 1, p. 215) His research showed the economic recession had not adversely affected medical office properties. The articles he researched included:
- a. Ex. 356 Article - “Medical Office Sector Poised for Strong Performance” This article describes how medical office buildings are recession resistant investments.
  - b. Ex. 357 Article - “Expect at Least \$2B in Medical Office Portfolio Sales in 2013”
  - c. Ex. 358 Article - “Medical Offices Grow in Favor Among Net Leases Investors.”
310. Mr. Land testified that section 7.1 of Exhibit 518, (IAAO publication on Verification of Sales) was not applicable to the leases he reviewed because none of the medical office leases in this case

were “long term leases with fixed rent.” (Ex. 93, p.14) (Day 1, pp. 209-210) Further he testified that the publication did not say throw out sale properties with fixed long term leases, instead he testified the appraiser should make any necessary adjustments. No adjustments to the Tier 1 sale price were necessary Mr. Land testified because none of the leases he saw had fixed rent. (Day 1, pp.209-210)

311. Mr. Land testified that all of the recent medical office leases he has he had never seen a lease that does not include an annual “step up” in rent anywhere from 2 to 3 percent annual increases . (Day 1, p.204-205)

### **Dr. Hamilton’s Review of Watson’s Appraisal**

312. The Court received Dr. Hamilton’s review appraisal of Mr. Watson’s appraisal report as Exhibit 325.

313. Dr. Hamilton reviewed Mr. Watson’s report in light of the appraisal principles contained in the manual and as addressed pursuant to applicable case law and the statutes. (Ex. 325, p.1)

314. Dr. Hamilton’s opinions include:

- a. Rejecting the sale price on the grounds that it was not a market transaction is not warranted because:
  - i. Rents of medical office buildings in the marketplace that have similar market characteristics pertaining to health care spending supports the rents being paid at the subject property; (Ex. 325, p.2)
  - ii. Watson does not conduct a proper analysis to determine whether there is a difference between contract and market rent and therefore does not follow the Manual guidelines to reject the sale nor does the Watson report follow the prescribed three Tier methodology for real estate appraisal for property tax purposes as stipulated in the Wisconsin statutes and case law.(Ex. 325, p.3)
  - iii. Watson has no analysis of the sale transaction in his report.
  - iv. Watson’s cost approach has been completed incorrectly and is not applicable in light of a Tier 1 sale. (Ex. 325, p.7)
  - v. Watson’s comparable sales are not truly comparable to the subject because all of the sales chosen by Watson show significantly lower market demand for health care services yet Watson has only made a minor 10% adjustment. Therefore Dr. Hamilton concludes his value conclusion is unsupported, unreliable and not credible. (Ex. 325, p.9-10)

- vi. Dr. Hamilton also finds Watson's income approach to be flawed because neither the rents used and the capitalization rate are supported by appropriate market data.(Ex. 325, p.10-13)

315. Dr. Hamilton concludes that each of Watson's three individual approaches to value has significant missing data or unexplained analysis resulting in unreliable opinions of value for each approach to value. Therefore Dr. Hamilton concludes that the Watson report is not credible and cannot be relied upon for a market value opinion.(Ex. 325, p.14).

316. The Court finds Dr. Hamilton's opinions to be persuasive and having probative value.