STATE OF WISCONSIN **CIRCUIT COURT BRANCH 15** **MILWAUKEE COUNTY**

JSWD WI VENTURE I LLC,

Plaintiff,

v. Case Nos. 23CV4244
24CV2194

CITY OF MILWAUKEE,

Defendant.

DECISION and ORDER

Introduction and Procedural History

On 6/8/23, plaintiff, JSWD WI Venture I, LLC, ("JSWD") filed this excessive assessment case[1] against defendant City of Milwaukee ("City") pursuant to Wis. Stat. § 74.37(3)(d) for a refund of excessive real property taxes for the tax year 2022 on its property located at 550 N. Van Buren Street in the City of Milwaukee, the Westin hotel (the "Property"). On 3/13/24, JSWD filed another excessive assessment case, 24CV2194, against City of Milwaukee pursuant to Wis. Stat § 74.37(3)(d) for a refund of excessive real property taxes for the tax year 2023 for the same Property. Case No. 24CV2194 was consolidated into this case by Court order[2] dated 7/26/24.

A Court Trial was held 9/15/25-9/18/25. Witnesses were: Laurence Allen ("Allen") (JSWD's appraiser), James Wiegand ("Wiegand") (City's assessor), Randall Erkert ("Erkert") (Westin developer/owner), Ryan Ranker ("Ranker") (City's assessor), David Lennhoff ("Lennhoff") (JSWD's appraisal reviewer).

JSWD filed its Post-Trial Brief[3] and Findings of Fact and Conclusions of Law[4] on 3/13/26. City filed its Post-Trial Brief[5] on 4/27/26. JSWD filed its Reply Brief[6] on 5/11/26.

Applicable Law

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[1] Document 2. Summons and Complaint.
[2] Document 40. Order to Consolidate and Amend Case Caption.
[3] Document 209.
[4] Document 211.
[5] Document 216.
[6] Document 219.

Valuation of Real Estate-Statutory Basis

The starting point for assessment of real property is found in Wis. Stat. § 70.32(1) Real estate, how valued:

> (1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual under Section 73.03(2a), Wis. Stats., from actual view or from the best information that the assessor can practicably obtain at the full value which could ordinarily be obtained therefore at private sale. In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally accepted 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.

The scope of the assessor's valuation is defined in Wis. Stat. § 70.03 Wis. Stats.:

Real property ... includes not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto ....

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.[7]

Wisconsin Property Assessment Manual

This statute (Wis. Stat. § 70.32(1)) requires adherence to the *Wisconsin Property Assessment Manual for Wisconsin Assessors* (hereafter "*Property Assessment Manual*"), absent conflicting law. Thus, we analyze the applicable statutes "in conjunction with basic principles of real property assessment as described by case law, treatises, and the *Property Assessment Manual.*"

Allright Props., Inc. v. City of Milwaukee, 2009 WI App 46, ¶10, 317 Wis. 2d 228, 767 N.W.2d 567. (citation and footnote omitted).

Intangible Assets are not Taxable in Wisconsin

Any approach to assessment of real property for taxation purposes first must conform to the statutory framework authorizing taxation. Taxes are to be levied upon all general property that is not exempt, including non-exempt real property.

[7] Document 93, p. 8, Wisconsin Property Assessment Manual (WPAM), Chapter 9 Real Property Valuation, 9-8.

Wis. Stat. §§ 70.01, 70.02. "Real property" includes the land itself, all improvements on the land, and "all fixtures and rights and privileges appertaining thereto...." Wis. Stat. § 70.03. *However, it cannot include intangible personal property, which is specifically exempted from taxation.* Wis. Stat. § 70.112(1). Assessors are to value real property at its full fair market value, in accordance with the Wisconsin Property Assessment Manual and professionally accepted appraisal practices. Wis. Stat. §§ 70.32(1), 73.03(2a)

ABKA Ltd. v. Board of Review of the Village of Fontana-On-Geneva Lake, 231 Wis. 2d 328, ¶ 52, 603 N.W.2d 217 (1999). (Wilcox, J., dissenting) (emphasis supplied).

Inextricably Intertwined Analysis

A determination of whether business value is assessable involves an inquiry into the income-producing capacity of the land. Income that is attributable to the land, rather than personal to the owner, is inextricably intertwined with the land and is thus transferable to future purchasers of the land. This income may then be included in the land's assessment under Wis. Stat. § 70.03 because it appertains to the land.

ABKA, 231 Wis. 2d 328, ¶ 13. (citation omitted).

The City fails to take into account the specific limitations that this court placed on the "inextricably intertwined" line of cases in *Adams.* In that case, we distinguished and recognized the limitations of *ABKA, Waste Management,* and *N/S Associates*:

> A review of the cases leading up to *ABKA* demonstrates that inclusion of business value in a property assessment should be the exception, not the norm. *See ABKA,* 231 Wis. 2d at 344, 603 N.W.2d 217 (cautioning that for income to be included in an assessment it must be attributable primarily to the nature of the property); *Waste Mgmt.,* 184 Wis. 2d at 565, 516 N.W.2d 695 (inclusion of business value "permissible only in very limited circumstances under § 70.32(1)"). Only business value related "primarily to the nature of" the property may be included; business value attributable to another source must be excluded from real property assessments. *ABKA,* 231 Wis. 2d at 344, 603 N.W.2d 217; *Waste Mgmt.,* 184 Wis. 2d at 566, 570, 516 N.W.2d 695 (*requiring income attributable to labor and skill to be factored out*).
>
> In *ABKA, Waste Management,* and *N/S Associates,* the courts confronted the question whether business value was attributable primarily to the underlying real estate or to the business skill and acumen of the property owner. In all three cases, the courts determined the value was attributable to the underlying real estate. Integral to the analysis in these cases was the conclusion that the income appertained to the real property under Wis. Stat. § 70.03, and therefore, was a proper element to include in the real estate assessment under Wis. Stat. § 70.32(1). *See ABKA,* 231 Wis. 2d at 344, 603 N.W.2d 217; *N/S Assocs.,* 164 Wis. 2d at 55, 473 N.W.2d 554.

The conclusions in these cases depend upon the definition of real property in Wis. Stat. § 70.03, which includes "all buildings and improvements thereon, and all fixtures and *rights and privileges* appertaining thereto(.)" (Emphasis added). Thus, in *ABKA* the management income derived from adjacent real estate could be included in the assessment because the physical proximity and interdependency of the real estate meant the income was a privilege appertaining to the subject real estate, rather than the product of the owner's skill and business acumen. Likewise, in *Waste Management,* the right to generate income from the landfill appertained to the nature of the real estate rather than the labor and skill of the owner. Finally, in *N/S Associates* the right to receive rental income appertained to the nature and location of the mall rather than to the unique qualities of the mall's ownership. *Adams,* 294 Wis. 2d 441, ¶¶ 80-82, 717 N.W.2d 803. This "inextricably intertwined" question is not, as the City describes, a necessary question under the income approach, but is rather a narrow exception to the general rule that business value should not be included in real estate assessments. *Id.,* ¶ 80; *Waste Mgmt.,* 184 Wis. 2d at 565, 516 N.W.2d 695. Furthermore, the City has not established, as required for the "inextricably intertwined" principle to apply, that all of the value it assigned to Walgreens' retail properties related "primarily to the nature of" the real property itself, as opposed to being attributable to the labor, skill, or business acumen of the developer, Walgreens, or other factors. *Adams,* 294 Wis. 2d 441, ¶¶ 80-82, 717 N.W.2d 803. Additionally, because of the general rule requiring strict construction of taxation statutes, statutory language authorizing the taxation of real property does not consequently extend to authorize taxation of other subjects, such as privileges. *The Law of Municipal Corporations* § 44.41.10.

Walgreen Co. v. Madison, 311 Wis. 2d 158, ¶ 63, 752 N.W.2d 687 (2008) (emphasis supplied).[8]

Income Attributable to Labor and Skill must be Discounted and Factored Out

[8] Cases holding that value of an income interest was inextricably intertwined with and appertained to the real property are: *Waste Management of Wis., Inc. v. Kenosha County Bd. of Review,* 184 Wis. 2d 541, 516 N.W.2d 695 (1994) (income from landfill attributed to inherent capacity of the land to accept waste); *ABKA Ltd. v. Board of Review of the Village of Fontana-On-Geneva Lake,* 231 Wis. 2d 328, ¶ 52, 603 N.W.2d 217 (1999) (income from management of adjacent condominium rentals); *State ex rel. N/S Associates v. Board of Review of The Village of Greendale,* 164 Wis. 2d 31, 473 N.W.2d 554 (Ct. App.1991) (Southridge Mall's business of leasing space to tenants); *Allright Props.* (income from a commercial surface parking lot near an airport); and *Marathon Petroleum Co. LP v. City of Milwaukee,* 2018 WI App 22, 381 Wis. 2d 180, 912 N.W.2d 117 (income from temporary storage of petroleum products in an oil terminal).
Cases holding that the income interest was *not* inextricably intertwined and did not appertain to the property are *Bonstores Realty One, LLC v. City of Wauwatosa,* 2013 WI App 131, ¶¶ 23-24, 351 Wis. 2d 439, 839 N.W.2d 893 (Bonstores management's capacity to sell department store goods); and *Walgreen Co. v. City of Madison*, 2008 WI 80, ¶¶ 11, 63, 311 Wis. 2d 158, 752 N.W.2d 687 (The City has not established, as required for the "inextricably intertwined" principle to apply, that all of the value it assigned to Walgreens' retail properties related "primarily to the nature of" the real property itself, as opposed to being attributable to the labor, skill, or business acumen of the developer, Walgreens, or other factors.)

As the City itself has frequently emphasized in this case, "an assessor must have the ability to discount, even disregard, factors that do not really bear on the value of a property." *Adams,* 294 Wis. 2d 441, ¶ 53, 717 N.W.2d 803. In cases involving lease terms that reflect not just property value but also unusual financing and business arrangements that do not really bear on the value of the property, therefore, *Adams* is in accord with *Flood* and *Flint* in *requiring assessors to disregard such factors, which should not be considered "inextricably intertwined" with the land.*

If we were to expand the law in the direction the City requests, property assessments would in essence become business value assessments, with assessors improperly equating financial arrangements with property value. *This is in contravention of the general principle that real property assessments should not be based on business value. Waste Mgmt.,* 184 Wis. 2d at 565, 516 N.W.2d 695. Rather, the valuation of the fair market value of property for purposes of property taxes is by its nature different from business, or income tax assessment. "*(A)n assessor's task is to value the real estate, not the business concern which may be using the property.*" *Id.*

Walgreen Co., 311 Wis. 2d 158, ¶¶ 64-65. (emphasis supplied).

Markarian Hierarchy

In *Markarian*, we addressed a landowner's challenge to the City of Cudahy's assessment of his property. We interpreted Wis. Stat. § 70.32(1) to set forth a hierarchical valuation methodology for single-property appraisal. The text of the statute lists three sources of information in a specific order, with the court in Markarian clarifying this order as indicative of the quality of the information each source provides. This methodology has been further described in the courts as providing for three "tiers" of analysis.

The best information of a property's fair market value is an arm's-length sale of the subject property. Examination of a recent arm's-length sale is known as a "tier 1" analysis.

If there is no recent sale of the subject property, the appraiser moves to tier 2, examining recent, arm's-length sales of reasonably comparable properties (the "sales comparison approach").

When both tier 1 and tier 2 are unavailable, an assessor then moves to tier 3. Under tier 3, an assessor "may consider 'all the factors collectively which have a bearing on value of the property in order to determine its fair market value.'" These factors include "cost, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, amount of insurance carried, value asserted in a prospectus and appraisals produced by the owner." Both the income approach, which seeks to capture the amount of income the property will generate over its useful life, and the cost approach, which seeks to measure the cost to replace the property, fit under the umbrella of tier 3 analysis.

Metropolitan Assocs. v. City of Milwaukee, 2018 WI 4, ¶¶ 31-34, 38, 379 Wis. 2d 141, 905 N.W.2d 784.[9]

WPAM and Hotel Valuation

Hotels and Motels

These properties are mainly engaged in the sale of rooms, food, and beverage. Hotels and motels are unique in that rooms are usually rented by the day or week. There is very little long-term rental. If a room is not sold for a day, that income is lost forever, whereas in a retail store, inventory can be sold tomorrow. The hotels and motels either close down or operate at a reduced capacity during the off-season. This is especially true of resort type properties where the trade is seasonal. Hotels can vary in amenities and services. Full-service hotels may have fitness centers, restaurants, taverns and meeting rooms while limited-service hotels may have no additional amenities.

These properties are extremely sensitive to changes in the economy. For example, if the state of the economy would decline and people could not afford vacation trips the value of resort hotels and motels could be seriously affected. Also, an increase in winter sports activities can turn areas that are dormant into year-round enterprises with a higher value. The use of the income approach for the valuation of hotels and motels is similar to its use for other types of properties in that the expenses are subtracted from the income to arrive at a net income figure which is capitalized into a market value estimate. Hotels may have additional expenses such as franchise fees that other types of properties do not have. *The assessor should make sure that only the real estate is being valued and not the quality of management or goodwill.*[10] WPAM (emphasis supplied).

We emphasize that an assessor's task is to value the real estate, not the business concern which may be using the property. The Property Assessment Manual for Wisconsin Assessors *advises assessors to estimate and subtract non-real estate values when using the income approach to valuation. The Manual appropriately cautions assessors, for example, to be aware when using income to value hotels that the amount of net income may be affected by the quality of the hotel's management or goodwill.* (emphasis supplied).

Waste Management, 184 Wis. 2d at 565.

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[9] Examples of Wisconsin courts using the tier 3 income approach are found in *State ex rel. Collison v. City of Milwaukee Bd. of Rev.,* 2021 WI 48, 397 Wis. 2d 246, 960 N.W.2d 1 (contaminated parking lot); *Metropolitan Assocs. v. City of Milwaukee,* 2018 WI 4, ¶¶ 19-20, 379 Wis. 2d 141, 905 N.W.2d 784 (Southgate Apartments) and *Walgreen Co. v. City of Madison*, 2008 WI 80, ¶¶ 11, 85, 311 Wis. 2d 158, 752 N.W.2d 687 (Income approach assessments of the fair market value of a fee simple interest (of Walgreens' retail properties) must be based on market rate rents rather than contract rents, absent the existence of an encumbrance bringing the leased fee value below actual market rates).

[10] Document 95, pp. 45-46. WPAM, Chapter 13, Commercial Valuation, pp. 45-46.

According to City assessor Wiegand, the WPAM does not provide much guidance regarding assessment of hotels. The WPAM does not reference the Rushmore Approach[11] at all, nor indicate that it's a preferred methodology in Wisconsin. The Rushmore Approach is used only for hotels, not nursing homes, office buildings, smaller retail stores or any other type of commercial property.[12]

Challenges to Excessive Property Assessments

Wis. Stat. § 74.37(3)(d) allows property owners to commence an action to recover excessive assessments after the owner receives notice that the taxation district has disallowed an excessive assessment claim.[13]

"As a starting point to the examination of a property owner's challenge to a tax assessment pursuant to Wis. Stat. § 74.37, the assessor's valuation is presumed to be correct. Wis. Stat. § 70.49(2)…." *Lowe's Home Ctrs., LLC v. City of Delavan,* 2023 WI 8, ¶ 32, 405 Wis. 2d 616, 985 N.W.2d 69. "Pursuant to Wis. Stat. § 70.49(2), the presumption attaches upon the filing of the assessment along with the assessor's affidavit." *Id.*, ¶ 39. "*Such a presumption may be rebutted if the assessor did not correctly apply the Manual and Wisconsin statutes or if a challenger presents significant contrary evidence.*" *Id.*, ¶ 32. (citations omitted) (emphasis supplied).

"The presumption can be overcome if the challenging party presents significant contrary evidence." *Metropolitan Associates,* 2018 WI 4, ¶ 50. Or, if the valuation did not comply "with the statutes and the Wisconsin Property Assessment Manual." *Bonstores*, 2013 WI App 131, ¶ 6.

"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 Associates*, 2018 WI 4, ¶ 40.

Circuit Court's Findings of Fact

> It is in the province of the circuit court as the trier of fact to make determinations of the weight and credibility of evidence. When the trial court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness's testimony.
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> *Lowe's Home Ctrs.*, 2023 WI 8, ¶ 68 (citations and internal quotations omitted).

The Rushmore Approach as Discussed under Wisconsin Case Law

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[11] Document 194, p. 20.

[12] *Id.*, p. 21.

[13] *See* Wis. Stat. § 74.37(1): "Definition. In this section, a 'claim for an excessive assessment' or an 'action for an excessive assessment' means a claim or action, respectively, by an aggrieved person to recover that amount of general property tax imposed because the assessment of property was excessive."

There is only one Wisconsin case that discusses the Rushmore Approach: *Wis. & Milwaukee Hotel, LLC v City of Milwaukee*, 2019 WI App 58, 389 Wis. 2d 10, 936 N.W.2d 403 (unpublished). *Wis. & Milwaukee Hotel* is citable[14] for its persuasive value only and need not be distinguished. *Wis. & Milwaukee Hotel* reviewed the city assessor's methodology (*i.e.*, the Rushmore Approach). The appellate court noted that the Rushmore Approach was an income-based method that values the hotel on the income it generates; calculating the net operating income by subtracting the hotel's expenses from its revenue. "Certain factors not attributable to the real estate are deducted from the net operating income so that only the income attributable to the real estate is used to calculate fair market value." *Id.*, ¶ 3. "Examples of factors not attributable to the real estate include business components such as franchising fees and management fees, as well as personal property such as furniture and fixtures." *Id.*, ¶ 3. n. 4. "The net operating income is then divided by the capitalization rate, resulting in the fair market value." *Id.*, ¶ 3. The appellate court concluded that "the City Assessor's Office did not violate the Manual (WPAM) or case law when using the Rushmore Approach to value hotels" because the circuit court's findings were supported by the evidence and the court's assessment of the credibility of the witnesses. *Id.*, ¶ 20.

This Court's view of *Wis. & Milwaukee Hotel* is that the appellate court approved generally the Rushmore Approach *as applied* in that case. Its holding that the Rushmore Approach did not violate the WPAM or Wisconsin case law was specific to that case based upon the evidence presented and the court's assessment of the credibility of the witnesses. The appellate court did not declare that the Rushmore Approach was the only acceptable methodology for valuing hotels in Wisconsin. *Wis. & Milwaukee Hotel* is distinguished from this case. The issue in this case is not simply that the Rushmore Approach may be acceptable for valuation of hotels *in some instances* but whether the Rushmore Approach was *acceptable for valuation* of the Westin hotel in this case *and* that it was *applied properly* to the Westin hotel in this case.

Discussion

Testimony of James Wiegand

City assessor Wiegand co-authored the Valuation Report[15] of the Westin hotel at 550 N. Van Buren Street, Milwaukee, WI. The property owner was JSWD WI Venture I, LLC. The Westin hotel was "a full-service upper upscale, 9-story, hotel … The Westin hotel has 220 rooms and is franchised under the Marriot brand of hotels. The Subject Property was built in 2017."[16] The highest and best use was: "As Vacant: commercial use as a hotel. As Improved: continued current commercial use as a hotel."[17]

[14] Unpublished *per curiam* opinions 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. Wis. Stat. § 809.23 (3)(b).
[15] Document 65.
[16] *Id.*, p. 3.
[17] *Id.*

Wiegand used the Markarian Tier 3 income approach. Wiegand's Tier 3 income approach was called the Rushmore Approach. After a brief history of the origin of the Rushmore Approach, developed by Stephen Rushmore, MAI,[18] the report summarized:

> When appraisers value hotels for property assessment purposes (where only the market value of the real property is at issue), the appraiser values a hotel in its entirety, allocating the hotel's value among its real property, business, and personal property components, and then separates (deducts) business component and personal property to isolate the value of the real property only.[19] *The Rushmore Approach separates business components by deducting management and franchise fees from the hotel's stabilized net income.* (emphasis supplied).
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> As cited by Wiegand, Author, Stephen Rushmore, explained his rationale:
>
> The basis for valuing a hotel's real property component is the income approach, which takes a property's stabilized net income and capitalizes it into an estimate of value. The stabilized net income is intended to reflect the anticipated operating results of the hotel over its remaining economic life, given any or all applicable stages of buildup, plateau, and decline in the life cycle. Therefore, such stabilized net income contains all of the revenue generated and expenses incurred by a hotel in carrying out its ongoing day-today functions of taking reservations, selling rooms, hiring, training, and directing staff, performing maintenance, purchasing equipment, and the myriad other activities needed to keep a hotel operating. …
>
> The four hotel value components of land, improvements, personal property (FF&E), and the going business work together to generate income. The land creates revenue based on its locational attributes. The improvements house the guestrooms. The guests sleep on the FF&E, and the business manages the entire operation. The resulting revenue, expenses, and income stream are therefore a conglomeration of these four components, and must be separated and subdivided in order to derive the portion of the income stream that is attributed to the real property components of land and improvements. *The Rushmore Approach accomplishes this task by stripping out of the conglomerated income stream any income attributed to the business and personal property components, leaving the income attributed to the land and improvements, which then can be capitalized into an estimate of the real property value.*[20] …
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> *The valuation of hotels is a highly specialized form of real estate appraisal, requiring not only a thorough understanding of the many principles and procedures of general appraising but also an in-depth knowledge of hotel operations.*[21] (emphasis supplied). …

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[18] *Id.*, p. 32.
[19] *Id.*
[20] *Id.*, p. 33.
[21] *Id.*

> As stated earlier, the Rushmore Approach separates business components by deducting management and franchise fees from the hotel's net income. Rushmore, In Defense of the "Rushmore Approach," at 3-4. The Rushmore and the WPAM consider the possibility that superior quality management may increase the rate of return as compared to typical or average management. However, the standard is competent management, and no adjustment is necessary where the quality of management is neither superior nor inferior. See Stephen Rushmore, "In Defense of the Rushmore Approach", p.10. *It is my opinion that the Westin Hotel is competently managed and therefore, no additional adjustment is warranted.*[22] (emphasis supplied).

Wiegand's initial testimony mirrored his understanding of the Rushmore Approach. "(F)or commercial properties, we are using the income approach, which takes the revenue of the property less the expenses, and then capitalize - capitalizing the net operating income to determine a fair market value."[23]

Wiegand testified that, "In terms of assessing the Westin, it's appropriate for the assessor to extract or take aside the *business value* of the Westin as opposed to what the real estate value is."[24] (emphasis supplied). However, his methodology for extracting the business value was the Rushmore Approach. That is, the City only deducted a line-item or an expense item for the management and franchise fees from the hotel's stabilized net income.[25] Wiegand's statement contained two fundamentals of the Rushmore approach. One, the assessor's task was to *value only the real estate*, not the business value of the business which may be using the property real property. Two, the only way to extract the intangible value of the ongoing business concern or business enterprise value was to deduct the management and franchise fees.

Wiegand conceded that he had not read Rushmore's book[26] or reviewed the digital version in the last five years.[27] Rushmore's Book, *Hotel Market Analysis and Valuation*, stated that:

> This book does not discuss the issue of separating real property, personal property, and intangible business assets. The reader should not construe any methodology or

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[22] *Id.*, p. 37. There is no support or analysis for the conclusion that "the standard is competent management and no adjustment is necessary where the quality of management is neither superior nor inferior" in this case for this Westin hotel. Therefore, the conclusion that Westin hotel is competently managed is *ipse dixit*. There was contrary evidence to "competently managed" when Erkert testified that the Westin "selected White Lodging because they were a superior brand of management company. They had a deep bench, so there were never moments when management-level people were unavailable to perform services." Document 195, p. 25.
[23] Document 194, p. 23.
[24] *Id.*, p. 28.
[25] *Id.*, p. 33.
[26] *Id.*, p. 29.
[27] *Id.*, p. 30.

wording presented here as an approach for separating real property, personal property, and intangible business assets.[28]

This quote highlights the Rushmore Approach methodology difference. The Rushmore Approach does not separate the real property, the personal property and intangible business assets except by deducting as line-item expenses the management and franchise fees. Wiegand said, "The reported expenses for the franchise fees and the reported personal property value from the owner, yes, we deduct those … as additional operating expenses.[29] There was no attempt to value what the operating management fees or franchise fees meant to the owner outside the line-item deductions.[30]

Wiegand agreed[31] that the WPAM definition of Going Concern value (from The Dictionary of Real Estate Appraisal, 5th edition) was the value of an operating business enterprise. Goodwill may be separately measured but is an integral component of going-concern value when it exists and is recognized.[32] Wiegand also agreed that the WPAM defined Business Enterprise Value (BEV) as "the value contribution of the total intangible assets of a continuing business enterprise such as marketing and management skill, an assembled work force, working capital, trade names, franchises, patents, trademarks, contracts, leases, customer base, and operating agreements."[33] Wiegand felt that there were many similarities in both his and Allen's income approaches and net operating income conclusions prior to making additional deductions.[34] However, Wiegand did not agree with Allen's additional deductions.[35]

The City's Valuation Report was partially prepared by Ranker as a critique[36] or appraisal review of Allen's Business Enterprise Valuation methodology. Wiegand admitted that it was not common for appraisers to do both appraisal and appraisal review in the same assignment.[37] Lennhoff pointed out that one assessor should have been listed as providing assistance and not signing the certification because the assistance did not involve the value conclusion.[38]

The WPAM, when discussing hotels, emphasized that, "The assessor should make sure that only the real estate is being valued and not the quality of management or goodwill." Wiegand agreed that management or goodwill meant subtracting the franchise fees and operating expenses but also make sure *not to value* the quality of management or the goodwill. Wiegand agreed that there is no follow-up statement that management or

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[28] Document 153, p. 17.
[29] Document 194, p. 33.
[30] *Id.*
[31] *Id.*, pp. 50-52.
[32] Document 93, p. 7.
[33] *Id.*
[34] Document 194, pp. 52-53.
[35] *Id.*
[36] *Id.*, p. 60.
[37] *Id.*, p. 61.
[38] Document 208, p. 42.

goodwill is *measured* by the deduction of franchise fees and operating expenses.[39] Erkert,[40] the developer/owner of the Westin, testified that the value of the brand and franchise did *not* equate to the amount of the franchise fees paid.[41] The value of the brand and franchise (*i.e.*, benefit) is *worth more* than the franchise fees paid because hotel owners look for profit or return on investment.[42]

This distinction is critical because implicit in the Rushmore Approach is the conclusion that deduction of the management fees and franchise fees removed all intangible value. *Wiegand agreed that the quality of the management or the goodwill was the same as the value of the brand or the Westin franchise.*[43] Yet, the quality of the management and goodwill (*e.g.*, the Westin franchise) is not measured by or equal to the deduction of the franchise fee. *The value of the Westin franchise does not equal the deducted expense of the franchise fee in this case*. Because the *value of the Westin franchise* (intangible asset) is greater than the *deducted franchise fee*, the Rushmore Approach may not be the best methodology for this case because the deductions do not remove all the intangible value from the final valuation of the real property.

Wiegand then admitted that he had not seen the franchise agreements prior to the deposition.[44] Wiegand's concession was that he did not read the franchise agreements earlier because it was not necessary because under the Rushmore Approach all he was required to do was deduct the franchise fees.[45] This illustrated that Wiegand viewed the Rushmore Approach as a perfunctory mathematical calculation rather than grappling with the reality that the value of the Westin franchise (an intangible asset) was greater than the deducted franchise fees.

Wiegand's testimony did not include a discussion of the value of the intellectual property (*e.g.*, trademarks), the assembled workforce or the reservation network associated with the Westin brand.[46] He conceded that Westin or Marriott trademarks "might" have an intangible value and that guest data "could" have intangible value.[47] Data about the Marriott Bonvoy program demonstrated that over 50% of the room night reservations were associated with the Westin brand.[48] Weigand did not conduct an independent analysis to compare the value of the room reservation reward network to the deduction of the franchise fee.[49] Again, Wiegand wrongly assumed that the value for these intangible assets (trademarks, assembled workforce or reservation system) was

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[39] Document 194, p. 68.

[40] The Court finds that Erkert as developer/owner/operator over the last 7 to 10 years of four hotels in the Milwaukee metropolitan area (Westin, Marriott, Springhill Suites and Fairfield Inn) has substantially greater credibility as a *market participant* than Wiegand and Ranker who are City assessors and not actual market participants.

[41] Document 195, p. 15.

[42] *Id.*

[43] *Id.*, pp. 68-69.

[44] *Id.*, pp. 70-71.

[45] *Id.*, p. 72.

[46] *Id.*, pp. 73-75.

[47] *Id.*, p. 76.

[48] *Id.*, pp. 79-80.

[49] *Id.*

measured by or equal to the deduction for the franchise fees under the Rushmore Approach.

Wiegand did not review clauses for the termination of the franchise agreement until preparation for trial.[50] So Wiegand had no knowledge of the conditions under which the Westin could lose its flag for the 2022 assessment. The lack of knowledge regarding the conditions under which the Westin could lose its franchise did not demonstrate the highly specialized form of real estate appraisal that requires not only a thorough understanding of the many principles and procedures of general appraising but also an in-depth knowledge of hotel operations *as required by the Rushmore Approach.*

Wiegand's lack of knowledge regarding the termination clauses and misapplication of the Rushmore Approach by only deducting the franchise fees and management fees contributed to Wiegand's conclusion that if the property were sold in 2022, the value of the property "*with or without the Westin*" flag would be 38 million.[51] Wiegand's conclusion that the *branded Westin hotel* that he valued in 2022 would be the same as an *unbranded hotel* is unsupported by the evidence.

His conclusion flowed from his perfunctory mathematical application of the Rushmore Approach (not in-depth knowledge of hotel operations) by deducting only the franchise fees and management fees. It flows from his misunderstanding that because *sometimes* new buyers buy a franchised hotel that the franchise runs with the land. Erkert testified that the Westin franchise agreement did not run with the property at 550 N. Van Buren Street because it could be terminated by Westin for cause[52] or the property could be sold *without* the franchise. Wiegand's conclusion overlooked the fact that new buyers have to pay a hefty fee for the franchise and the extra cost for the property improvement plan[53] to meet the requirements of the franchisor.

The value of the franchise (an intangible asset) is attributable to the brand itself (*e.g.*, the marketing or the skill and acumen of the property owner), not the underlying real estate. There is no real estate, by itself, that represents or constitutes the Westin brand. Nor does the Westin brand derive its value from any particular real estate. The income attributable to the Westin franchise runs with the Westin franchise, not real estate whereon the franchise conducts its business. The Westin franchise or brand did not appertain or run with the land because the franchise can be terminated while the land would continue. The Westin franchise (brand) was not inextricably intertwined with the land in this case. The Rushmore Approach concedes this very point by allowing a deduction for intangibles (the franchise fee and management fee) in the first place. The issue in this case is not that the value of the franchise (an intangible asset) ran (was intertwined) with the land (it did not) but whether the Rushmore Approach accounted sufficiently for these intangibles by deducting only the franchise and management fees.

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[50] *Id.*, p. 74.
[51] Document 207, pp. 87-88.
[52] Document 195, p. 28.
[53] Document 207, pp. 51-52. Document 206, pp. 17-18. Document 195, pp. 28-29.

Wiegand's reasons, location, quality of construction, and historic operating results,[54] illustrated his erroneous conclusion. The real estate and building at 550 N. Van Buren Street in Milwaukee *solely due to its location* did not evoke a Westin hotel with its brand, trademarks, reservation system, unique business operation style, advertising and marketing, etc. The new owners of a differently branded hotel would quickly remove the trademarks of the Westin brand. The Westin branded hotel would simply disappear while the real estate and building of a differently branded hotel would go forward. The quality of construction marks a quality building but not necessarily a Westin branded hotel, as opposed to an unbranded or differently branded hotel. The historic operating results may or may not be duplicated by an unbranded hotel or differently branded hotel on that site. But it would not be the Westin hotel with its unique brand. *The "with or without the Westin" brand essentially discounted to zero the intangible value of the Westin brand itself.*

As Erkert pointed out, if the Westin hotel were sold in 2022 or 2023 without the Westin franchise, "the hotel would be worth a lot less."[55] Allen noted that:

> The Intangible Assets at a hotel includes the contribution to value of the franchise. … This branding is considered to contribute value to the property by its global reservation system, which provides the owner marketing, advertising, purchasing, reservation systems and training. Travelers book at branded hotels such as the subject and pay a premium in order to earn points for future stays at Westin hotels. The room nights booked through Westin in 2023 were 38,441 which was 61% of the total room nights. The revenue from the Westin bookings was $8,541,747 or 61% of the total room revenue. …
> As indicated by the performance of the subject property with a Westin brand, *brand affiliations contribute significantly to the performance of a hotel*. This is also true of other brands.[56] (emphasis supplied).

By not removing the franchise brand business value (which was much greater than the franchise and management fee) Wiegand improperly included financial arrangements (the franchise agreement resulting in the Westin brand) in the valuation of the real estate.

Testimony of Ryan Ranker

The City presented Ranker's testimony to support Wiegand and set up the differences between the Rushmore Approach and the Business Enterprise Valuation (BEV) methodology.[57] Ranker testified that the City used the Rushmore approach because the market seemed to apply the Rushmore Approach most often whereas the other approach (BEV) was seen in tax appeals.[58] That is, the "only time (the City

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[54] Document 207, p. 88.
[55] Document 195, p. 40.
[56] Document 111, p. 98.
[57] *Id.*, p. 53.
[58] *Id.*

Assessor's Office) see the Business Enterprise Value approach is when property taxes are involved."[59]

Ranker set forth his distinctions. One, the Rushmore Approach considered these expense items as already accounted for and thus making a below the line deduction was double counting. Two, some of the items valued (*e.g.*, assembled workforce) were just not indicated by *market participants* and should not even be considered.[60] (emphasis supplied).

Ranker reviewed various materials that supported the Rushmore Approach as opposed to BEV methodology. This Court recognizes both the Rushmore Approach and the BEV methodology for valuing hotels. This Court cannot say based upon this record that one methodology is right and the other is wrong. This Court cannot say based upon this record that one methodology is superior to the other. Both methodologies have qualified expert advocates and grounded reasoning. The material presented by both sides show a national debate with courts in other jurisdictions reaching different conclusions. How courts have responded to these issues is "all over the place."[61] As Lennhoff noted, there are some courts that "have decided no, we are going to stick with Rushmore … but there are others most recently that I can think of … that came out in favor against Rushmore."[62]

Some of the arguments of the parties presented their competing methodology and conclusions and then argued that this court should pick their presentation as the winner. This Court's role is to review the credibility of the witnesses and determine whether the witness *credibly* presented their position (*methodology and application of the methodology in this case*) not simply pick sides.

Ranker's view was that in his work in the City Assessor's Office, all of the appraisals that were received, other than property taxes, applied a similar Rushmore or management fee method to value hotels.[63] This may be the opinion of City of Milwaukee appraisers but both methodologies have been accepted nationally. Allen justified his valuation using the BEV methodology.[64]

Regarding Ranker's opinion that "market participants" preferred the Rushmore Approach, this Court finds the testimony of Erkert more persuasive. Erkert as developer/owner/operator over the last 7 to 10 years of four hotels in the Milwaukee metropolitan area (Westin, Marriott, Springhill Suites and Fairfield Inn) has substantially greater credibility as a *market participant* than Wiegand and Ranker who are City assessors and not market participants. Erkert testified that the Westin brand was a lifestyle brand, a bit newer and fresher, that appealed to a younger demographic and was

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[59] *Id.*, p. 55.
[60] *Id.*, p. 56.
[61] Document 208, p. 94.
[62] *Id.*, p. 97.
[63] Document 195, p. 55.
[64] Document 111, pp. 13-15, 96-102.

an offset to the Marriott.[65] Marriott's Bonvoy (a reservation system) was the most powerful of those Affinity programs in the industry. Westin, as part of Marriott's reservation system, had 50% of the reservations come through the reservation system.[66] The reservation system had immense value to the Westin.[67] Yet, the Rushmore Approach did not account for the reservation system (intangible asset) at the Westin.

Erkert testified that as part of the franchise agreement the Westin had the right to use the advertising, digital marketing platform and guest data.[68] These intangible assets all added value to the Westin because of the brand or franchise. These intangible assets were not accounted for by the Rushmore Approach.

Ranker discussed businesses valuations of parking lots, oil terminals and gas stations.[69] He noted that the identity of the owner was not a factor in generating income for these businesses.[70] This Court agrees that for businesses such as parking lots, oil terminals and gas stations any intangible value is inextricably intertwined with the real property and not the business value. *See Allright Props.* (*supra*) and *Marathon Petroleum* (*supra*). The parking lot income derives from and appertains to the real estate (the land's capacity to provide space for parking cars). The income from a petroleum facility derives from and appertains to the real estate (the land's capacity to house an oil pipeline terminal).

Ranker continued:

> And the same thing, it's the cost of the goods that they're selling them. Those are their expenses. So, in that way, it's - that type of operation where stuff is inextricably intertwined is *similar* to the hotel. *They're selling the hotel services*, and they're subtracting the cost to provide those services.[71] (emphasis supplied).

Ranker's testimony that the Westin was selling hotel services reveals the fundamental misunderstanding by the City assessors in this case. The Westin is "a full-service upper upscale … hotel."[72] The Westin does not merely sell hotel services. *The Westin sells the benefits of the Westin brand* to their younger, life-style conscious travelers. The concept of luxury branding distinguishes the Westin hotel and the Westin brand or franchise from parking spaces, petroleum and gasoline (all fungible commodities). Parking lots, oil terminals and gas stations are *not similar* to the Westin hotel with its brand and franchise.

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[65] Document 195, p. 11.
[66] *Id.*, pp. 13-14.
[67] *Id.*
[68] *Id.*, pp. 18-19.
[69] *Id.*, pp. 67-69.
[70] *Id.*, p. 69.
[71] *Id.*
[72] Document 65, p. 3.

Marriott's Bonvoy (a reservation system) not only contributed to the 50% room reservations, it demonstrated brand loyalty.[73] According to Erkert, the real estate and building at 550 N. Van Buren Street in Milwaukee as an *unbranded* hotel would not have received those room reservations. The customers would have gone elsewhere in town.[74]

According to Lennhoff, the Westin hotel enjoyed "brand advantage."[75] That is, The Westin brand outperformed the basic brand of similar hotels in the competitive set.[76] "(T)he subject is out performing its competitors which everything else equal would suggest its flag is better than the standard flag in that set and therefore, it probably warrants in Rushmore's own mind an additional adjustment."[77]

The Westin brand or franchise generated a substantial amount of income for the Westin hotel, not the real estate and building at 550 N. Van Buren Street in Milwaukee. The City assessor's failure to evaluate and deduct the business value of the Westin brand violated the principles of the *Walgreen Co.* (*supra*) case. *Walgreen Co.* held that, "that inclusion of business value in a property assessment should be the exception, not the norm. *See ABKA,* 231 Wis. 2d at 344, 603 N.W.2d 217 (cautioning that for income to be included in an assessment it must be attributable primarily to the nature of the property)." *Id.*, ¶ 63. " If we were to expand the law in the direction the City requests, property assessments would in essence become business value assessments, with assessors improperly equating financial arrangements with property value. This is in contravention of the general principle that real property assessments should not be based on business value." *Id.*, ¶ 65.

On cross-examination, Ranker revealed another misconception when he answered that the franchise agreement was "the real property of a hotel operation."[78] After being impeached by his deposition testimony where he agreed that a franchise agreement was an intangible (asset), Ranker clarified that the franchise agreement was an intangible asset but part of the real property. As discussed above, the franchise agreement did not run with the real estate. Ranker's testimony contravenes *Walgreen Co.'s* holding that, "This 'inextricably intertwined' question is not, as the City describes, a necessary question under the income approach, but is rather a narrow exception to the general rule that business value should not be included in real estate assessments." *Id.*, ¶ 63. "(A)n assessor's task is to value the real estate, not the business concern which may be using the property." *Id.*, ¶ 63.

Lennhoff commented on Ranker's opinion when asked whether a franchise agreement was an intangible asset:

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[73] Document 195, p. 28.
[74] *Id.*, pp. 27-28.
[75] Document 208, pp. 61-62.
[76] *Id.*
[77] *Id.*, p. 62.
[78] Document 195, p. 90.

> Yes, as a matter of fact, that sort of struck me as a strange comment from the assessor, the senior assessor today that it isn't. I mean, if you look in any business textbook and I have numerous right behind me if you look at the financial accounting publications, they list contractual intangible assets franchise agreements as a specific line item. There is no question that it's an intangible asset, no question.

Testimony of David Lennhoff

Lennhoff authored an appraisal review[79] of the City's Valuation Report by Wiegand and Ranker. Lennhoff's qualifications are superior to Wiegand and Ranker in scope, professional associations, publications, teaching, length of experience and knowledge of the national appraisal marketplace. The Court finds that Lennhoff is exceptionally well-qualified to give opinions on the particular issue in this case: whether the Rushmore Approach was best methodology for the Westin hotel and whether Wiegand and Ranker applied it properly in this case.

Some of Lennhoff's criticisms of the City's Valuation Report have already been discussed by this Court. One, the City's Valuation Report does not answer the important question of the correct value of the fee simple interest in the real estate. That is, to isolate the valuation to the fee simple interest in the real estate only.[80] Two, the City's Valuation Report when valuing the real property included business enterprise value (an intangible asset).[81] "Instead of the value of the real estate it has more or less offered a value of the operating hotel business as well."[82]

Three, Lennhoff questions the use of the Rushmore Approach when it is clear that "the primary Rushmore textbook cited in the appraisal report in support of this method of isolating the tangible and intangible personal property doesn't even cover that topic. At Introduction, the book states, 'This book does not discuss the issue of separating real property, personal property, and intangible business assets.'"[83] Therefore, the Rushmore Approach may not the best methodology for this case.

Four, the City's Valuation Report misapplied the Rushmore Approach to this case.[84] " (T)hey didnt, in my opinion, have a *correct number* so it sort of understates … what isn't removed."[85] The City's Valuation Report did not have the correct number because, "Most of the *critical elements to the valuation lack sufficient support*; for example, there is no market analysis or support for the highest and best use conclusion, no meaningful supply and demand analysis, there is no support for the timing of the stabilization, and *there is no support evident for the income and expense conclusions. The*

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[79] Document 98.
[80] *Id.*, p. 8. *See Regency West Apartments LLC v. City of Racine*, 2016 WI 99, ¶ 23, 372 Wis. 2d 282, 888 N.W.2d 611. "All the rights, privileges, and benefits of the real estate are included in this value. This is also called the market value of a fee simple interest in the property."
[81] *Id.*
[82] *Id.*
[83] *Id.*, p. 6.
[84] *Id.*, p. 8.
[85] Document 208, p. 46.

capitalization rate discussion also lacks analysis. Instead, the various indicators are just stated along with the appraiser's conclusion. There is no way the intended user, the Court, would be able to understand how the conclusions in the report were reached."[86] (emphasis supplied). This Court agrees with Lennhoff's opinions.

Highest and best use. "(A) highest and best use is critical because in a market value appraisal it's the highest and best use that you're valuing so if you get the highest and best use wrong, you can't get the value right."[87] In 2022, there was a volatile, unstable market. There was no support for the one-year stabilization; some people expected three-years for the market to recover[88] (the timing of the use) and no analysis of when the hotel would reach that highest and best use.[89] Moreover, there was "no analysis whatsoever for the financial feasibility of such a use (*e.g.*, as a commercial hotel).[90]

Lennhoff could not tell if the *correct numbers* were used. The income from the restaurant was overstated.[91] There was no support for the occupancy about when it will occur.[92]

The original report Lennhoff received did not have "anything about a franchise fee."[93] Lennhoff stated that he "got a document a few days ago that sort of redid that and remarkably a franchise fee appeared but so it's very hard to get comfortable with the total expenses."[94]

Lennhoff questioned the capitalization rate because "it's a good example of the fact that there is data but there is no analysis to the data."[95] "The capitalization rate used is based exclusively on national survey data, with no evidence of disaggregation to the local market."[96] Moreover, "they're applied without an understanding of what they represent so, for instance, the same rate that is used capitalize the income into value of the supposed real estate, that rate is used against the tangible personal property to supposedly get the income to tangible personal property, that's not the same rate. It should be a different rate and so the cap rate on top of that, if you look at the range of rates that are offered in the material you would never arrive at the percentage that was included or concluded…."[97]

The problem with the City's Valuation Report is that *even if only one of Lennhoff's criticisms is correct* about not having the correct number, the entire

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[86] Document 98, p. 4.
[87] Document 208, p. 47.
[88] *Id.*, p. 52.
[89] *Id.*, pp. 47-48.
[90] Document 98, p. 4.
[91] Document 208, pp. 52-54.
[92] *Id.*, 54-55.
[93] *Id.*, p. 54.
[94] *Id.*
[95] *Id.*, p. 55.
[96] Document 98, p. 7.
[97] Document 208, pp. 56-57.

calculation of the value of the real estate only is incorrect. The Court finds Lennhoff credible and agrees with Lennhoff's analysis. There are many incorrect numbers in the City's Valuation Report, and therefore, it cannot be relied upon.

The Court finds that when looked at in the context of this entire record, the City's Valuation Report is not reliable nor supported by sufficient analysis or data. Lennhoff's criticisms are appropriate and significant. The City's Valuation Report violates the WPAM because the assessors did not "*make sure that only the real estate is being valued and not the quality of management or goodwill.*" As discussed above, The City's Valuation Report did not comply with Wisconsin case law, especially the *Walgreen Co.* case. *The City assessors*, because of both their conceptual flaws regarding valuation and the misapplication of the Rushmore Approach, *are not credible*.

Testimony of Laurence Allen

Allen, JSWD's appraiser submitted his appraisal report for the Westin hotel.[98] He was qualified to render opinions regarding hotel valuations. He used the Markarian Tier 3 income approach.[99] Allen explained:

> The basic income approach was a direct capitalization income that is taking a stabilized net income and dividing by an overall rate of return. In order to develop the statements, we took the conclusions in terms of occupancy and rate from the market analysis and projected that into an income statement looking at all of the operating costs for the business and the real estate including the food and beverage costs and the telecommunication costs, the administrative costs, management fees, franchise fees, replacement reserve.[100]

This was set forth in a *pro forma.*[101] After additional analysis and reliance on both the Income Approach and the Sales Comparison Approach, Allen concluded that the total business assets for the Westin hotel as of 1/1/2022 were $36.360 million and as of 1/1/2023 were $37.870 million.[102]

Allen then compared the total asset value of the Westin hotel to an unbranded center city hotel to arrive at franchise value of $7.706 million[103] for 1/1/2022 and $8.150 million[104] for 1/1/2023 for the Westin hotel.

As explained by Allen:

> "(A) summary of the valuation and the allocation of the total assets that are part of the going concern so there is the total asset value of 36,360,000 less the tangible

[98] Document 111.
[99] Document 206, pp. 2-3.
[100] *Id.*
[101] Document 111, pp. 81-82.
[102] *Id.*, p. 101.
[103] *Id.*, pp. 8, 107.
[104] *Id.*, p. 107.

personal property of 1,425,000 less the intangible business value, which in this case was the brand contribution which was 7,706,000 followed by the assembled workforce which was 650,000 indicating a residual value to the real property of 28 million rounded.[105]

The final valuation of the real property by Allen was $28 million for 1/1/2022 and $28.940 million for 1/1/2023.[106]

Allen provided both analysis and data for the valuation of the assembled workforce.[107]

The City's cross-examination covered many topics but resulted in little damage to Allen's methodology or the application of his methodology in this case. The Court finds Allen's testimony credible.

Conclusion

Allen was the only appraiser/assessor[108] found credible by this Court. His opinion as to the value of the Westin is given the most weight. His testimony and appraisal represent significant contrary evidence to the City's Valuation Report. The Court finds that JSWD has overcome the presumption of correctness. Moreover, as discussed above, the City assessors failed to follow the WPAM and Wisconsin case law so their assessment and evaluation carry no weight.[109] Because Allen's testimony and appraisal present the only credible evidence, the Court adopts Allen's conclusions regarding value of the real estate. Therefore, the Court approves the valuation of the Westin by Allen of $28 million for 1/1/2022 and $28.940 million for 1/1/2023. The Court finds that the City's assessment of the Westin was excessive for the tax years of 2022 and 2023.

Order

The Court finds that the City's assessment was excessive and approves the valuations for the Westin by Allen of $28 million for 1/1/2022 and $28.940 million for 1/1/2023. JSWD is entitled to a refund of all taxes paid on the portion of the tax assessment that was excessive plus statutory interest.

Dated this 16th day of July 2026.

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[105] Document 206, p. 34.
[106] Document 111, p. 108.
[107] *Id.*, pp. 107-108. *See* Allen's testimony Document 206, pp. 31-33.
[108] Lennhoff was an appraisal reviewer. He did not do an appraisal.
[109] *See Bloomer Housing Ltd. P'ship v. City of Bloomer*, 2002 WI App 252, 257 Wis. 2d 883, 653 N.W.2d 309 "The weight and credibility to be given to the opinions of expert witnesses is 'uniquely within the province of the fact finder.'" *Id.*, ¶ 12. "Where, as here, there is conflicting testimony, the fact finder is the ultimate arbiter of credibility and when more than one reasonable inference can be drawn, 'the reviewing court must accept the inference drawn by the trier of fact.'" *Id.*

BY THE COURT:

JDWatts

Hon. J. D. Watts
Milwaukee County Circuit Court
Branch 15

CIRCUIT COURT OF MILWAUKEE CO. WISCONSIN SEAL