**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**December 8, 2016**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2016AP21** **Cir. Ct. No. 2009CV9871**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

**METROPOLITAN ASSOCIATES,**

**PLAINTIFF-APPELLANT,**

**V.**

**CITY OF MILWAUKEE,**

**DEFENDANT-RESPONDENT.**

APPEAL from orders of the circuit court for Milwaukee County: JEFFREY A. CONEN and DENNIS P. MORONEY, Judges. *Affirmed.*

Before Kloppenburg, P.J, Sherman, and Blanchard, JJ.

¶1 BLANCHARD, J. Metropolitan Associates appeals a circuit court decision upholding the City of Milwaukee's property tax assessments for the 2008-2011 tax years for property owned by Metropolitan. Metropolitan argues that the circuit court erred in concluding that Metropolitan failed to rebut the

statutory presumption of correctness to which the City's assessments are entitled. Specifically, Metropolitan argues that it rebutted the presumption of correctness because: (1) the City's initial assessments were invalid as a matter of law; (2) the City's subsequent single-property assessments, which the City used to evaluate the initial assessments, relied on property valuation techniques that were contrary to Wisconsin property tax assessment law; and (3) the circuit court erred in finding that the valuation opinions of Metropolitan's appraiser were not reliable and did not constitute "significant evidence" that the City's initial assessments were incorrect.[1] For the reasons discussed below, we affirm.

## BACKGROUND

¶2 Summarized in broad strokes, the City issued assessments on Metropolitan properties, along with many other properties, based on the "mass appraisal" technique, which we describe below. Metropolitan challenged these assessments in circuit court. In response to this challenge and to test its initial assessments, the City performed additional valuations, this time using single-property valuation techniques, which we also describe below. Metropolitan also challenged these single-property valuations. We generally use the term "initial assessment" to refer to the first valuations by the City using the mass appraisal technique, and "single-property assessment" to refer to the later valuations by the City using single-property valuation techniques.

¶3 Now summarizing pertinent facts in more detail, there is no dispute regarding the following. The City issued initial assessments on seven

[1] The Honorable Jeffrey A. Conen initially presided over this matter in the circuit court, and it was later transferred to the Honorable Dennis P. Moroney.

Metropolitan properties for the tax years 2008-2013. Metropolitan objected to the initial assessments as excessive. The City's board of assessors and board of review both sustained the initial assessments. Metropolitan brought a circuit court action against the City challenging the initial assessments.

¶4 In the circuit court, the parties agreed to narrow the scope of the court's review by presenting evidence related to a representative property sample. More specifically, they agreed to present evidence regarding the value for only the tax years 2008-2011 of only one of the seven properties, the Southgate Apartments, and to resolve issues pertinent to the other properties and the other tax years consistent with the court's resolution of the Southgate dispute.

¶5 At all times pertinent to this appeal, Southgate was located on six real estate tax parcels: three in Milwaukee and three in an adjacent city. Only the values of the three Milwaukee parcels are at issue here. The three pertinent Southgate parcels each consisted of multiple apartment buildings.

¶6 At a trial to the circuit court, the City's assessor testified that, pursuant to WIS. STAT. § 70.32(1) (2013-14),[2] the City is required to assess each parcel at fair market value and in accordance with the Wisconsin Property Assessment Manual ("the manual"). The assessor testified that Southgate's initial assessments were calculated each tax year using a "mass appraisal" assessment technique, as opposed to single-property assessment techniques. The assessor testified that under the mass appraisal technique, "an assessor values entire groups of property using systematic techniques and … statistical testing." The assessor

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

testified that the mass appraisal technique is "used by probably the majority of assessment jurisdictions in the nation." The assessor further testified that, with 150,000 properties to assess in Milwaukee each year, using some form of mass appraisal is "a necessity," and is "endorsed" in the manual and case law, because it is one of the only practical and efficient ways to address this volume of properties while achieving uniformity.

¶7 After Metropolitan appealed Southgate's initial assessments to the circuit court, the City's assessor prepared single-property assessments (using a process we summarize below) for each of the three pertinent Southgate parcels. According to the values calculated by the assessor using the single-property assessment techniques, the fair market value for each Southgate parcel was higher than the initial assessments calculated using the mass appraisal technique.

¶8 The assessor explained that WIS. STAT. § 70.32, the manual, and Wisconsin case law set forth a three-tier valuation technique to be used when conducting single-property assessments, which to repeat was the approach the assessor used to check the challenged initial assessments. We will refer to this as "the three-tier approach." The best evidence of a parcel's value under the three-tier approach is tier 1 analysis, an arm's length sale of the subject property. None of the Southgate parcels had been the subject of recent sales, and therefore the assessor was unable to conduct a tier 1 analysis.

¶9 The next best evidence under the three-tier approach is tier 2, the sales comparison analysis. Under a tier 2 analysis, values are calculated using evidence from recent sales of properties that are comparable to the subject property. The assessor explained at trial how he calculated values for the Southgate parcels using the sales comparison analysis, adjusting for the values of

certain features of the comparable properties and the Southgate parcels, such as physical characteristics and locations. The assessor testified that the values that he calculated for the Southgate parcels using the sales comparison analysis were higher than the assessed values obtained through mass appraisal, supporting a conclusion that the initial assessments were not excessive.

¶10 The assessor testified that he further checked the tier 2 (sales comparison) analysis results by using a tier 3 income analysis technique. More precisely, there are other tier 3 techniques, but the only one pertinent to our discussion involves calculating a property's current value based on its potential to generate income. The assessor provided details of the manner in which he conducted the income analysis on the Southgate parcels, and testified that the income analysis values validated the results from his sales comparison analysis. In his view this confirmed through this second method that the original assessments were not excessive.

¶11 Metropolitan hired an appraiser to conduct valuations of the Southgate parcels. Like the City's assessor, Metropolitan's appraiser conducted tier 2 and tier 3 valuations of the Southgate parcels. However, Metropolitan's appraiser calculated lower values than the City's initial assessment values for each parcel in each year. Based on these lower values, Metropolitan challenged the City's initial assessments as excessive. Separately, Metropolitan challenged the City's subsequent single-property assessments and aspects of the assessor's valuation techniques. Additional details regarding the techniques used by both the City's assessor and Metropolitan's appraiser are referred to in the Discussion section below as necessary to the analysis.

¶12 Following a two-day trial, the circuit court affirmed the City's initial assessments of the Southgate parcels. In a written decision, the court rejected Metropolitan's assertion that the City's use of the mass appraisal technique to calculate the initial assessments was contrary to law. Regarding the assessor's and the appraiser's respective single-property tier 2 and tier 3 valuations, the court found that "the City's sales comparison approach is more reliable than Metropolitan's approach" and that "the City's income approach was more reliable than Metropolitan's approach." Metropolitan appeals.

## DISCUSSION

¶13 On appeal, Metropolitan argues that the circuit court erred in determining that Metropolitan failed to rebut the presumption of correctness to which the City's initial assessments are entitled. Metropolitan argues that we should conclude that it rebutted the presumption because: (1) the City's initial assessments were invalid as a matter of law because the assessor used the mass appraisal technique and not the three-tier approach; (2) the assessor's tier 2 and tier 3 assessments were conducted in a manner contrary to Wisconsin assessment law; and (3) the circuit court erred in finding that the assessor's methods in conducting the single-property assessments were reasonable and that Metropolitan's appraiser's values, reached using the three-tier approach, were not reliable and do not constitute significant evidence contrary to the City's initial assessments. We first set forth the pertinent legal standards, and then address these arguments in turn.

### *Pertinent Legal Standards*

¶14 The Wisconsin Statutes provide that "[r]eal property shall be valued by the assessor in the manner specified in the Wisconsin property assessment

manual ... at the full value which could ordinarily be obtained therefor at private sale." WIS. STAT. § 70.32(1).

¶15 Property owners may pursue actions like the one Metropolitan filed here to recover for excessive assessments under WIS. STAT. § 74.37(3)(d) after the owner receives notice that the taxation district has disallowed an excessive assessment claim. In reviewing assessment challenges, the circuit court begins with the presumption that the assessor has correctly assessed the subject property. WIS. STAT. § 70.49(2); ***Bonstores Realty One, LLC v. City of Wauwatosa***, 2013 WI App 131, ¶5, 351 Wis. 2d 439, 839 N.W.2d 893 (citing ***Allright Props., Inc. v. City of Milwaukee***, 2009 WI App 46, ¶12, 317 Wis. 2d 228, 767 N.W.2d 567).

¶16 However, the presumption of correctness no longer applies if the taxpayer presents significant contrary evidence to the circuit court or shows that the assessment does not apply the concepts delineated in the manual. ***Bonstores***, 351 Wis. 2d 439, ¶5 (citing ***Adams Outdoor Advert., Ltd. v. City of Madison***, 2006 WI 104, ¶¶25, 56, 294 Wis. 2d 441, 717 N.W.2d 803). "Stated differently, when a city assessor correctly applies the *Property Assessment Manual* and Wisconsin Statutes, and there is no significant evidence to the contrary, courts will reject a party's challenge to the assessment." ***Allright Props.***, 317 Wis. 2d 228, ¶12 (citation omitted).

¶17 On appeal, we defer to the circuit court's findings of fact unless those findings are clearly erroneous. ***Id.***, ¶13. However, we review de novo whether the assessments were adequately conducted in compliance with the applicable statutes and the manual, taking into account the "no significant evidence" standard referenced above. ***Id.***, ¶¶12-13 (citing ***Adams Outdoor Advert.***, 294 Wis. 2d 441, ¶26).

*Mass Appraisal Technique/Validity of Assessments as a Matter of Law*

¶18 Metropolitan argues that the City's initial assessments of the Southgate parcels were conducted contrary to the terms of WIS. STAT. § 70.32(1) and case law interpreting that statute.[3] Specifically, Metropolitan argues that, by using the mass appraisal technique to calculate Southgate's initial assessments, "the City failed to set the assessments on the basis prescribed by Wisconsin law" and that the assessor should have conducted the initial assessments using tier 2 (sales comparison) of the three-tier approach, using the "best information available."

¶19 Metropolitan's argument based on the phrase "best information available" comes from the following sentence in WIS. STAT. § 70.32(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." (Emphasis added.) However, as a review of the entire sentence reveals, Metropolitan's argument

[3] WISCONSIN STAT. § 70.32(1) provides as follows:

> 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.

omits two critical directions, namely, that assessors are to value property "*in the manner specified in the Wisconsin property assessment manual*" and they are to do so based on "the best information *that the assessor can practicably obtain*." *See* § 70.32(1) (emphasis added).

¶20 Given the statutory direction that assessors are to calculate initial assessments "in the manner specified in" the manual, we turn to the pertinent portions of the manual. The manual states that "[c]ommercial property can be valued by either single property or mass appraisal techniques." WISCONSIN PROPERTY ASSESSMENT MANUAL, 9-5 (rev. 1/09). More specifically, the manual explicitly encourages assessors to use mass appraisal for the initial valuations of large numbers of properties, stating that "[m]ass appraisal is the underlying principle that Wisconsin assessors should be using to value properties in their respective jurisdictions." ***Id.*** at 7-32. The manual further explains as follows:

> The assessor needs skills in both mass appraisal and single property appraisal[:] Mass appraisal skills for producing initial values, whether during a reappraisal year or not, and single property appraisal skills to defend specific property values ....

***Id.*** Thus, under the manual, it is only after a taxpayer challenges a valuation calculated using the mass appraisal technique that assessors are to conduct a single-property assessment under the three-tiered approach, in order to "defend" the valuations. ***Id.***

¶21 Turning to the "practicably" concept in WIS. STAT. § 70.32(1), which requires assessments using the best information that the city can *practicably* obtain, the manual provides that the best assessment information that can be obtained in a practical manner when addressing high-volume situations will initially come from a mass-appraisal valuation. *See* WISCONSIN PROPERTY

ASSESSMENT MANUAL, 7-32. Thus, to the extent that Metropolitan intends to argue that the "best information available" to assessors to conduct initial assessments must be based on the three-tier approach, starting with tier 1, we reject this argument based on the terms of the manual, as directed by § 70.32.

¶22 For these reasons, we conclude that the assessor here complied with WIS. STAT. § 70.32 in properly relying on the manual to calculate initial assessments of the Southgate parcels, using mass appraisal, and then, after Metropolitan challenged the assessments as excessive, to calculate single-property valuations.

¶23 Metropolitan takes a puzzling approach on the mass appraisal issue. It refuses to concede the obvious, namely, that mass appraisal is an acceptable technique to conduct initial assessments under the manual. However, despite its statement that it will not concede the point, it subsequently seems implicitly to concede that it was acceptable for the City to calculate initial assessments using the mass appraisal technique.

¶24 Metropolitan argues that ***Adams Outdoor Advertising***, 294 Wis. 2d 441, ¶34, supports its position that the City's use of the mass appraisal technique "is a direct violation of the [three-tier approach's] requirement" that tier 3 methodologies may be used only when there are no reasonably comparable sales information available, because mass appraisal incorporates data used in tier 3 methodologies. However, ***Adams Outdoor Advertising*** did not involve a challenge to mass appraisal, and therefore has nothing to say on this issue. ***Adams Outdoor Advertising*** instead focused on whether the city properly conducted a three-tier assessment of the taxpayer's billboards, opting to employ tier 3 methods over tier 2 methods. *See* ***id.***, ¶3. Metropolitan fails to convince us that case law

discussing how to properly apply the three-tier approach is pertinent to its argument that the assessor's initial use of mass appraisal violated Wisconsin law.

*Assessor's Single-Property Valuations*

¶25 Metropolitan challenges the single-property assessments on the ground that they were not conducted in compliance with Wisconsin assessment law, as cited above, because the assessor ignored what Metropolitan asserts is the "single best information component available to value [Southgate]—its individual economic characteristics." In particular, Metropolitan takes issue with the assessor's decision not to use Southgate's operating expenses in conducting his tier 2 (sales comparison) analysis. The assessor elected not to use the operating expenses after concluding that they were aberrant. The assessor's approach was erroneous, Metropolitan argues, because economic characteristics are the "single best information" available when using the sales comparison analysis. We reject these arguments on the ground that the assessor here used an approach that is explicitly contemplated in the manual.

¶26 It is true that operating expenses are economic characteristics under the manual. WISCONSIN PROPERTY ASSESSMENT MANUAL, 7-21. However, Metropolitan fails to cite any authority, most importantly including any portion of the manual, for the proposition that assessors are obligated under all circumstances to include in their calculations all economic characteristics. That is, Metropolitan reads a requirement into the manual that is not there, namely, that when using a sales comparison analysis, an assessor *must* calculate the price of comparable properties using all economic characteristics.

¶27 Instead, the manual lists elements that "should be considered in the sales comparison approach," including real property rights conveyed, financing

terms, market conditions, location, physical characteristics, and economic characteristics. ***Id.*** There is no requirement that all data that falls within each and every element of comparison must be used in conducting a sales comparison analysis. ***Adams Outdoor Advertising***, 294 Wis. 2d 441, ¶53 ("an assessor must have the ability to discount, even disregard, factors that do not really bear on the value of a property."). To the contrary, the manual contains the unsurprising instruction that "[i]n deciding what elements should be used for comparison the assessor should look to the actions of the marketplace." WISCONSIN PROPERTY ASSESSMENT MANUAL 7-21. Thus, rather than requiring a strictly mechanical approach under which assessors cannot consider market factors, assessors need to use an element of comparison only if the market, in the reasonable judgment of the assessor, requires it. *See* ***id.*** (adjustments are made based on whether buyers in the marketplace are paying more); ***id.*** at 7-20 (some properties require no adjustments).

¶28 Here, the assessor testified that he did consider the differences in economic characteristics between Southgate and other comparable properties, including Southgate's operating expenses, but chose not to make an adjustment because "[t]he market didn't show that [an adjustment] was required." The assessor explained that "if the market shows that an adjustment is warranted, one is made. Many adjustments can be considered, but if there's no adjustment warranted by the market, one is not made." The circuit court could reasonably have construed this testimony to mean that the assessor makes adjustments that reflect current trends in the pertinent local market (here, the local rental housing market) and that, although he considers all of the factors set forth in the manual, he uses data specific to the subject property relating to a particular factor in making his calculations only if the data are consistent with the current market

trends. Thus, the assessor here did not use Southgate's operating expenses because he viewed them to be unusually high for the local rental housing market. Metropolitan does not argue that the assessor incorrectly characterized Southgate's operating expenses as being unusually high.

¶29 Metropolitan's argument that the assessor erroneously opted not to use Southgate's operating expenses in conducting his sales comparison analysis is flawed for yet another reason. As the City correctly observes, the portions of the manual that Metropolitan cites in support of its assertion that the assessor made errors in his tier 2 *sales comparison analysis* by not adjusting for economic characteristics primarily come from the portion of the manual discussing how to perform a tier 3 *income analysis*. For example, Metropolitan cites the manual in arguing that "[i]t is imperative that the assessor adjust for different economic characteristics '[b]ecause buyers and sellers of commercial properties usually base their transaction decision on the property's net operating income.'" (quoting WISCONSIN PROPERTY ASSESSMENT MANUAL 9-6). However, Metropolitan omits the end of the quotation from the manual, which states that "..., the assessor must be thoroughly familiar with the income approach." ***Id.*** at 9-6. Similarly, the passage in the manual that Metropolitan relies on to argue that the manual "explains that the income a property generates is some of the best information available and essential to valuing such properties 'because it represents the way investors think when they buy and sell income [producing] property on the market,'" was taken from the section of the manual titled "INCOME APPROACH" and begins by stating: "The income approach may frequently be the most reliable method for estimating the value of commercial property because it represents ...." ***Id.*** at 9-11. Metropolitan fails to explain why the manual's

instruction on how to complete a tier 3 (income) analysis is applicable to the assessor's tier 2 (sales comparison) analysis.

¶30 Metropolitan asserts that our supreme court has "instructed that the 'best information' for income producing properties is the actual income and expenses experienced by the subject properties," citing in support ***Metropolitan Holding Co. v. Board of Review***, 173 Wis. 2d 626, 495 N.W.2d 314 (1993). Metropolitan's reliance on ***Metropolitan Holding*** is misplaced because, as with Metropolitan's citations to portions of the manual discussed above, ***Metropolitan Holding*** involved the tier 3 (income) analysis, not the tier 2 (sales comparison) analysis. ***Id.*** at 628 ("At issue is the proper annual income figure to be used when assessing a subsidized housing project under the capitalization of income approach."). Moreover, ***Metropolitan Holding*** is a public housing case, and such property is valued differently than properties such as Southgate pursuant to the manual. *See* ***Walgreen Co. v. City of Madison***, 2008 WI 80, ¶38, 311 Wis. 2d 158, 752 N.W.2d 687 (citing WISCONSIN PROPERTY ASSESSMENT MANUAL 7-29) (***Metropolitan Holding*** "is not on point because it was a public housing case, bringing ***Metropolitan Holding*** within the ambit of the exception explicitly delineated by the language of the *Property Assessment Manual's* requirement that assessors must value property based on the market rent rather than the contract rent leased property 'unless valuing federally subsidized housing.'").

¶31 To the extent that Metropolitan may intend to argue that the assessor's tier 3 income analysis violated Wisconsin assessment law, we reject this argument. Again, Metropolitan argues that the assessor violated Wisconsin law in failing to use the "best" valuation information available in conducting its tier 3 (income) analysis because the assessor failed to rely on Metropolitan's operating expenses. As with our conclusion regarding his use of the tier 2 (sales

comparison) analysis, we similarly conclude that the assessor did not violate Wisconsin assessment law in conducting his income analysis of the value of the Southgate parcels. The manual states that "[t]he information used in the income approach must be obtained or verified by what the assessor finds in the marketplace." WISCONSIN PROPERTY ASSESSMENT MANUAL 9-12; s*ee also* ***Walgreen***, 311 Wis. 2d 158, ¶24 (quoting the manual). In other words, as set forth above, if an assessor reasonably concludes that available information regarding a specific property is inconsistent with the current local market trends, the assessor may choose to exclude that information in calculating a value under the tier 3 income analysis.

¶32 Explaining in more detail, the City's assessor testified that he excluded Southgate's actual expenses from his tier 3 income analysis because they were significantly higher than typical expenses in the Milwaukee market, but that he included Southgate's actual income because it fell within the range of incomes in the Milwaukee market. Metropolitan does not argue that the assessor was mistaken in concluding that Southgate's income was consistent with the Milwaukee market, and that its operating expenses were higher than average. Instead, Metropolitan argues that the assessor's income analysis was "unfair" and contrary to Wisconsin assessment law. However, Metropolitan fails to convince us that the assessor's approach was either unfair or contrary to Wisconsin law.

¶33 For these reasons, we reject Metropolitan's argument that the assessor's sales comparison and income analyses were not conducted in accordance with Wisconsin assessment law.

*Circuit Court's Findings of Fact Regarding Metropolitan's Appraiser*

¶34 As explained above, the City's assessments are entitled to a presumption of correctness unless the taxpayer shows that the assessments were calculated in violation of Wisconsin assessment law or the taxpayer presents "significant contrary evidence" as to the value of the property. ***Allright Props.***, 317 Wis. 2d 228, ¶12. Based on this standard, Metropolitan argues that the circuit court erred in concluding that the initial assessments were not calculated in violation of Wisconsin law, and in concluding that Metropolitan did not present "significant contrary evidence," through Metropolitan's appraiser, sufficient to rebut the presumption of correctness. We have already explained why we reject Metropolitan's argument that the initial assessments and subsequent single-property assessments violated the law. For the following reasons we reject the remainder of this argument as well.

¶35 In support of its position that the circuit court erred in concluding that Metropolitan did not present evidence sufficient to rebut the presumption in favor of the City, Metropolitan argues that the court "inappropriately criticized" its appraiser's methodology and valuation techniques. Following trial, the circuit court determined in a thoughtful and carefully written decision that "[t]he City's sales comparison approach is more reliable than Metropolitan's approach" and that "[t]he City's income approach was more reliable than Metropolitan's approach." The court further determined that the City assessor's methods were "reasonable" and that Metropolitan failed to present evidence sufficient to overcome the presumption of correctness. In asking us to reject the court's judgment as to the weight and credibility of the competing assessment evidence, Metropolitan effectively asks us to substitute our judgment for the circuit court's regarding the credibility of witnesses and the relative weights to assign to various pieces of the

evidence at trial, neither of which we can do. *See* ***id.***, ¶13 (the factfinder is the ultimate arbitrator of credibility of witnesses); ***Bonstores***, 351 Wis. 2d 439, ¶6 ("it is within the province of the factfinder to determine the weight ... of expert witnesses' opinions.") (citation omitted).

¶36 Metropolitan provides us with no reason to conclude that the circuit court improperly found flaws in Metropolitan's appraiser's sales comparison and income analyses. Metropolitan also fails to provide us with any reason why we should upset the circuit court's findings that the City's assessments were more reliable than Metropolitan's. No reason is evident to us.

## CONCLUSION

¶37 For the foregoing reasons, we affirm the orders of the circuit court affirming the City's assessments.

*By the Court.*—Orders affirmed.

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