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**The court has entered the following order:**

**District:** 1 **Circuit Court Case No.** 2017CV4572
**Appeal No.** 2018AP669

Ronald L. Collison v. City of Milwaukee Board of Review

The court having considered the Motion for Reconsideration filed in the above matter,

**IT IS ORDERED** that the Motion for Reconsideration is denied, with no costs.

PATIENCE DRAKE ROGGENSACK, J. *(dissenting).* The majority opinion overlooked controlling legal precedent in regard to the method to be used in taxation valuations and it ignored material uncontested facts of record. Therefore, in service of the public, the court should employ the opportunity provided by the motion for reconsideration to correct its significant legal

and factual errors as Wis. S. Ct. IOP II.J. (June 30, 2021) provides.[1] Because the court ignores its obligation to follow the plain words of Wis. Stat. § 70.32 and what has been controlling precedent for more than 50 years in regard to taxation valuations, as well as the testimony of the appraiser, I respectfully dissent.

## I. BACKGROUND

This is a real property taxation case. Therefore, there are statutes and controlling legal precedents that direct the method by which real estate is to be valued. Wisconsin Stat. § 70.32(1) requires that "[r]eal property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual [WPAM] provided under s. 73.03(2a)."

WPAM explains that there "are three traditional approaches to developing the opinion of value: the sales comparison approach, the cost approach, and the income approach."[2] "Assessors, and appraisers valuing property for assessment purposes, must use the 'Markarian hierarchy' in valuing real property," which prioritizes which approach to valuation is to be used as the valuation method.[3] In addition, when property is known to be subject to environmental pollution, the "assessor shall consider the impairment of the value of the property" caused by that contamination. Wis. Stat. § 70.32(1m). This statutory directive is confirmed in WPAM.[4]

## II. DISCUSSION

A valuation that is done for taxation purposes comes within Wis. Stat. § 70.32(1), which requires real estate to be valued at its fair-market value. Markarian v. City of Cudahy, 45 Wis. 2d 683, 685, 173 N.W.2d 627 (1970). WPAM requires use of "[t]he Markarian hierarchy [which] requires assessors to first use a recent arm's length sale of the subject property. If there is no such sale, the next step is to use recent comparable sales of other properties. Only if there are no recent comparable sales of other properties should the assessor proceed to other indications of value that include the income and cost approaches to value."[5] Id. at 686 (explaining that the "best information" of the fair market value is a sale of the subject property;

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[1] Wisconsin S. Ct. IOP II.J. (June 30, 2021) provides in relevant part: "A change of decision on reconsideration will ensue only when the court has overlooked controlling legal precedent or important policy considerations or has overlooked or misconstrued a controlling or significant fact appearing in the record."

[2] Wisconsin Property Assessment Manual (WPAM), 7-22 (2016).

[3] Id. at 7-23.

[4] Id. at 8-42-46.

[5] Id. at 7-23.

without such a sale, then sales of "reasonably comparable property" should be used; absent that, other factors such as income or cost methods of valuation can be used).

WPAM explains the method to be employed in valuing contamination property. It begins by noting that "[b]oth Wisconsin Statutes and appraisal principles require the assessor to consider the effect of contamination on the value of real estate."[6] WPAM cites Wis. Stat. § 70.32(1m) as a requirement that an assessor shall meet. It provides, "[i]n addition to the factors set out in sub. (1), the assessor shall consider the impairment of the value of the property because of . . . environmental pollution."[7] WPAM provides that because there may be a weak market for these properties, "the assessor may be justified in placing minimal value, such as $100, on the property."[8] As a way of addressing contamination, "the assessor should consider using a Discounted Cash Flow Analysis to estimate value."[9]

WPAM instructs that "there may be some situations where the extent of contamination is unknown and thus the effect on value is difficult to measure."[10] "The guidelines in this section provide a framework the assessor can use to gather information to help estimate the effect of contamination on value."[11] "For example, although there may not be sales of truly comparable contaminated property, there may be sales of other contaminated property indicating a range of values or, possibly, a percentage adjustment the assessor can use to reflect the contamination."[12]

The majority opinion misstates the uncontested testimony of the assessor when it states, "it was the contamination that drove the assessor's decision to use the income approach to value the property."[13] Jim Wiegand's appraisal and the reasons he chose for valuing the property by the income method are stated in his written appraisal, Exhibit 3, which is part of the record provided to us.

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[6] Id. at 8-43.

[7] Id.

[8] Id.

[9] Id. 8-46.

[10] Id.

[11] Id.

[12] Id. at 8-46.

[13] Collison v. City of Milwaukee Bd. of Rev., 2021 WI 48, ¶38, 397 Wis. 2d 246, 360 N.W.2d 1.

Wiegand used the income approach because there had been no recent sale of the property or sales of comparable properties. Wiegand explained, "[t]he Direct Sales Comparison Approach was considered but not applied due to difficulty finding sales of similar properties." When he valued the property using the income approach, he was following the Markarian hierarchy that is required by WPAM and more than 50 years of precedent. There is nothing in his report or testimony from which one could conclude that he used the income valuation method because of contamination of Collison's property. The majority opinion is creating facts to support the position it chose to take.

Furthermore, Exhibit 3 shows he employed direct capitalization of income, with no consideration of an impairment of value due to contamination.[14] First, he determined projected annual revenue based on what Collison had been paid for parking in the past. Next, he deducted an amount equivalent to a 30 percent vacancy rate as an expense. Then he capitalized the resulting number, $4,082, by 12.841 percent, which was "a market derived capitalization rate of 10.00% plus an effective tax rate of 2.841%."[15]

The income approach to valuation was done by standard methods and appears accurate. The problem Wiegand's appraisal presents is its lack of even the most minimal reduction in value due to environmental pollution that all parties agree was present. He could have reduced his appraised value by only $50 or $100, explained why the reduction in value was so minimal and complied with WPAM and Wis. Stat. § 70.32(1m), both of which require him to account for contamination in his valuation.[16] Instead, he did nothing.

## III. CONCLUSION

Contaminated properties exist throughout the State. Therefore, the valuation method the court established here will have far-reaching effects. Stated otherwise, because the majority opinion affirms an appraisal that did not reduce the standard income valuation by even $50, the opinion will be used by municipalities to ignore both WPAM and Wis. Stat. § 70.32(1m)'s clear directive to account for the effect of contamination in taxation valuations. The court steps over its obligations to evaluate the appraisal under § 70.32(1m) and WPAM by ignoring Wiegand's testimony about why he chose to employ the income approach for his appraisal. The court also ignores more than 50 years of legal precedent during which WPAM and the Markarian hierarchy have established methods to be used in taxation valuations of real property, as well as the criteria that direct which method to employ.

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[14] Id. at 9-27.

[15] Written report of Jim Wiegand, Senior Property Appraiser, Exhibit 3, p. 6; WPAM at 9-16.

[16] Id. at 8-42-46.

The court should have the courage to correct its own mistakes. The motion for reconsideration affords the court this opportunity. Because the majority opinion does not do so, I respectfully dissent.

I am authorized to state that Justice REBECCA GRASSL BRADLEY joins this dissent.

Sheila T. Reiff
Clerk of Supreme Court