

**Board of Review  
of the City of Onalaska**

Thursday, July 23, 2015

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1 The Meeting of the Board of Review of the City of Onalaska was called to order at 8:00 a.m. on  
2 Thursday, July 23, 2015. It was noted that the meeting had been announced and a notice posted  
3 at City Hall.

4

5 Roll call was taken with the following members present: Mayor Joe Chilsen, Ald. Jim Binash,  
6 Ald. Jim Olson, Ald. Bob Muth, City Clerk Cari Burmaster

7

8 Also Present: City Attorney Sean O’Flaherty, City Assessor Heather Wolfe, Daniel Furdek of  
9 Real Estate Appraisals, Inc., Michael E. Byrnes of Paradigm Tax Group

10

11 **Item 2 – Approval of minutes from the previous meeting**

12

13 Motion by Ald. Olson, second by Ald. Muth, to approve the minutes from the previous meeting  
14 as printed and on file in the City Clerk’s Office.

15

16 On voice vote, motion carried.

17

18 **Consideration and possible action on the following items:**

19

20 **Item 3 – Presentation of objections for actual real/personal property values by owners or**  
21 **their representatives according to the procedures established in Sec. 70.47(8) of the**  
22 **Wisconsin Statutes**

23

24 The following is a verbatim transcript. Spoken figures are assumed and transcribed as dollar  
25 amounts based on context.

26

27 Cari: If you’ll just repeat after me – Do you solemnly swear in the matter now in hearing to tell  
28 the truth, the whole truth and nothing but the truth, so help you God? If so, say ‘I do.’

29

30 Michael: I do.

31

32 Cari: Thank you. Can I swear in the assessor at this time, too?

33

34 Mayor Chilsen: Absolutely.

35

36 Cari: Do you solemnly swear in the matter now in hearing to tell the truth, the whole truth and  
37 nothing but the truth, so help you God? If so, say ‘I do.’

38

39 Daniel: Yes.

40

41 Cari: Thank you. Heather, will you be providing any testimony today?

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Heather: No.

Cari: OK. If we do have to have you do any later, we'll swear you in, OK?

Mayor Chilsen: OK, parties are sworn. Please state your case.

Michael: OK. So I begin and then ... I know different boards have different ...

Mayor Chilsen: You will state your case.

Michael: OK.

Cari: Maybe we'll just go over procedurally what we're going to do.

Mayor Chilsen: This is how the procedure works. You will state your case. The assessor will state his case. Then the board will ask questions and make their decision.

Michael: OK, perfect. First, I'm unsure if I need to address the subpoena, but I will begin with ...

Mayor Chilsen: Excuse me, could you state your name for the record, please?

Michael: My name is Michael E. Byrnes, and I'm an associate at Paradigm Tax Group, who is a representative of Menards.

Mayor Chilsen: Thank you.

Michael: Again, I'm unsure if I need to address the subpoena first this morning, but I will begin with the valuation side of our appeal. Did everyone receive a copy of this?

Cari: We only received one copy and we were not provided any more copies.

Michael: Not provided any more copies?

Cari: No. If you would like copies we could certainly have them go made, but we would have to bill you for the copies and our charge is 25 cents a page.

Michael: OK. Would everyone feel comfortable without a copy? I have an additional copy here; actually, two additional copies if everyone would like to ...

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83 Daniel: I can probably save you some money because I'm going to object to the admission of  
84 that report. There is no expert here to examine on that report.

85

86 Mayor Chilsen: OK, let's just state one and then we'll state the other so that we keep that  
87 organized. The arguments are going to be made to us rather than ... What we don't want to have  
88 is people going back and forth this way. OK?

89

90 Michael: OK, perfect.

91

92 Daniel: Thank you, Mr. Chairman. Like I said, I'm going to object to the admission ...

93

94 Cari: Dan, could I also have you use the microphone?

95

96 Daniel: I'm going to object to the admission of the report. There's no expert here to examine on  
97 that report. By Mr. Byrnes testifying to that report it's strictly hearsay. This is part of the  
98 disrespect that Menards has shown to this board. They don't even bring their professional. I was  
99 required to come here from Milwaukee. The city is paying me. It should be no different for  
100 Menards.

101

102 Mayor Chilsen: Do we have to rule on that?

103

104 Daniel: I would like it moved that his report is not admitted as evidence. There's nobody here to  
105 examine ...

106

107 Mayor Chilsen: I would like to wait for our attorney to get here to weigh in on this before we  
108 move forward.

109

110 Cari: The report that you're talking about, just for verification, is because we have a couple of  
111 documents ... We're talking about the appraisal? Is that the document that we're talking about?

112

113 Michael: Yes.

114

115 Cari: And that's the one you're also objecting to – the appraisal?

116

117 Daniel: Yes.

118

119 Cari: It's one document that was submitted, because there are others that are on here also.

120

121 Mayor Chilsen: Our attorney is here, so he can weigh in on this for us.

122

123 Cari: We can just recap.

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124

125 Mayor Chilsen: We're going to put you [Sean] into action right off the bat.

126

127 Daniel: I've objected to the admission of the appraisal report because there are no experts here  
128 to examine. Mr. Byrnes did not write the report, and by admitting this and letting him testify to  
129 the report it would be strictly hearsay evidence, and I object to that.

130

131 Sean: Is the objection to the admission? Has Mr. Byrnes moved for the entry of the report?

132

133 Daniel: I don't believe he has at this point. It was preliminary that the city would make some  
134 copies for him when I stepped in and said I'll save him some money and time because I'm going  
135 to object to the admission of the report without experts here to examine who wrote the report.

136

137 Sean. Right. Well, Mr. Byrnes can testify to what he has personal knowledge of. The report  
138 stands for itself, so Mr. Byrnes can't testify as to the contents of the report. He can testify to  
139 what he has knowledge of only.

140

141 Daniel: Yes, I agree.

142

143 Michael: Then I move to allow this report for the record.

144

145 Sean: There's no basis for ... I think as it's being pointed out by Mr. Furdek, there is no one  
146 here to testify with respect to the report. The report is written by third parties and there's no  
147 ability to cross-examine what is on the report. To the extent that you have items that you can  
148 provide testimony with respect to that you have personal knowledge of, you can provide  
149 opinions as to those. But the report itself isn't admissible because there's a lack of foundation  
150 for the admission.

151

152 Michael: OK. I can attempt to have the appraiser on the phone. Is that acceptable?

153

154 Sean: My understanding – and Chair, do you mind if I address this question?

155

156 Mayor Chilsen: You may address the question. Thank you.

157

158 Sean: My understanding is that there was a request by Menards to have telephone testimony,  
159 and that was turned down by the Board of Review previously. So unless you're making a new  
160 request and they grant your request, that would not be allowed right now.

161

162 Michael: OK. Then I respectfully request that you allow me to try to contact the appraiser who  
163 completed the report to have him testify as to the contents of this report.

164

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165 Daniel: Mr. Chairman, I would object to that, too. They were notified to be here in person and  
166 that we weren't going to have a telephone conference. He has his opportunity to present this  
167 case, to bring his expert witnesses. They've failed to do that, so I would object to any telephone  
168 conference.

169

170 Michael: I was notified to appear. I was not notified to bring any expert witnesses on our  
171 behalf.

172

173 Mayor Chilsen: We shouldn't have this back-and-forth here. Let's act on the request of this  
174 board to operate by telephone.

175

176 Cari: I would make a motion that we do not grant the request because for the same reasons that  
177 we didn't request it originally. It's very hard to cross-examine people when they're not here to  
178 get the accurate testimony from them.

179

180 Ald. Muth: I'll second that because it was outlined prior. This was scheduled a long time ago.  
181 We've gone through training to make sure we're up to speed on this, and we do not want  
182 testimony that is just by a report somebody drops off. I want somebody we can cross-examine  
183 and the assessor can cross-examine, and if we have questions we can have them present to talk to  
184 them. So I agree.

185

186 Mayor Chilsen: Motion by Cari, seconded by Bob Muth, to deny the motion. All in favor  
187 signify by saying 'aye.'

188

189 On voice vote, motion carried unanimously, 5-0.

190

191 Michael: Then I submit as a tax representative of Menards that I can testify to the knowledge  
192 that I do have so we can continue with this hearing. I didn't know if I needed to wait for your  
193 approval.

194

195 Mayor Chilsen: No, go ahead.

196

197 Michael: OK. Again, the knowledge that I have is based off of the information that was gleaned  
198 within this appraisal. And based on the different ...

199

200 Daniel: I object to that. That's not firsthand knowledge. He's referring to the report. Like I  
201 said before, we don't have somebody to examine here. What I understand is the City Attorney  
202 said you can testify to what you know directly and not to the report.

203

204 Sean: That is correct. It was restated very clearly. But you can testify to what you have  
205 personal knowledge of. Your knowledge of what's in the report is not your personal knowledge.

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206 The purpose of the Board of Review hearing from the taxpayer's perspective is to provide  
207 information with respect to showing that the assessment made by the City Assessor was  
208 incorrect. Your testimony or any evidence that you provide should be based upon personal  
209 knowledge or an expert witness who is providing information with respect to that issue.

210

211 Michael: Well, you kind of caught me off-guard here. My understanding was that there is no  
212 requirement to have an expert witness in place for the board to hear or to review the appraisal.

213

214 Sean: There is no requirement that you provide an expert if you have personal knowledge and  
215 you're going to bring evidence with respect to the Board of Review. But as you know, as a tax  
216 representative the Board of Review is required to assume that the assessor's assessment is correct  
217 unless credible evidence is presented by the taxpayer showing that the assessor's assessment is  
218 incorrect. Once they decide that then they go to a second step, which is to decide what the  
219 correct assessment should be. It is the taxpayer's burden to be able to provide evidence with  
220 respect to each of those items. If the taxpayer comes in and is able to provide that on the  
221 taxpayer's own, that is fine. If the taxpayer requires experts to do that, that is the burden of the  
222 taxpayer.

223

224 Michael: OK. Then can I submit that the appraisal be reviewed without my testimony on the  
225 board's behalf? Because if I'm not testifying to this fact, this is the evidence that has been  
226 submitted by the taxpayer.

227

228 Daniel: Mr. Chairman, I would object to that, too. There would be nobody to examine on that  
229 report. It's my original objection.

230

231 Michael: On its face, it's created by an expert.

232

233 Sean: In order to have evidence submitted to the Board of Review, it has to be done by  
234 testimony or it has to be presented by written evidence which is accepted by the Board of  
235 Review. In order to be accepted by the Board of Review it has to be credible evidence. In order  
236 to be credible you can't be submitting hearsay evidence or other evidence which lacks  
237 credibility. In this case, the request to submit a report which was written by someone who is not  
238 here and which is based upon facts compiled by someone who is not here does not give rise to  
239 the assessor's ability to cross-examine that, or for the city or for the members of the Board of  
240 Review to assess the credibility of the report. The hallmark of being able to have cross-  
241 examination and being able to assess whether or not a piece of evidence is credible is the ability  
242 to cross-examine.

243

244 Michael: But if you said that if they can cross-examine by written evidence, then I'm a little  
245 confused as to why the report itself can't be cross-examined without testimony.

246

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247 Sean: Someone with actual knowledge, whether it's the creator or other actual knowledge of the  
248 report, needs to be available for cross-examination because the report speaks for itself. The  
249 report is a series of words and numbers. What is subject to cross-examination are the means and  
250 methods of the creation of the document.

251

252 Michael: So are you saying that the document may be – I don't know – false as the result of the  
253 expert witness not being here to testify on behalf that it is a true report?

254

255 Mayor Chilsen: No. I believe that the reason that it cannot be entered in is because the author of  
256 that document is not here to be cross-examined. It has nothing to do with the validity of the  
257 report. It just has to do with our ability to cross-examine the author of that document.

258

259 Sean: And to amplify on that, the issue is that the report only reflects an opinion of an  
260 individual. That individual is not here for cross-examination.

261

262 Michael: To be honest with you, I am a little flabbergasted that you won't accept the report. I  
263 mean, it's generated by a well-respected appraisal firm. It is not false. It was accepted last year  
264 for review. I'm trying to figure out what I can do to at least have you take a look at it just based  
265 on the data that is in the report.

266

267 Sean: I think you should move forward with your presentation of what you have personal  
268 knowledge of regarding the value of the Menards property.

269

270 Michael: Well, the personal knowledge that I have of the Menards property primarily relies on  
271 research that I have done on my own. I don't have any of that evidence here with me because I  
272 was relying upon the appraisal as my evidence. The only other additional evidence that I do  
273 have personal knowledge of is a report that was submitted to us by Menards by their insurance  
274 company stating the real value of the property at about \$5 million. That's the personal  
275 knowledge that I do have. Now, if I can't speak to the different sales and income that are in the  
276 appraisal, it limits me in what I can testify to.

277

278 Sean: Do you have anything further to add?

279

280 Daniel: I just want to renew my objection to him talking about the report. He can testify to what  
281 he has personal knowledge of, and that's it. ... Mr. Chairman, I would just like to add before Mr.  
282 Byrnes gets into anything that if he's going to be testifying from a document I would like to see  
283 the document. He would have to make copies of it so if he's going to say that it's his personal  
284 knowledge I'd like to see the document that he's testifying from.

285

286 Mayor Chilsen: That is fine with me. I think that's fair.

287

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288 Michael: I don't have any additional evidence to add that can assist me in this valuation. Again,  
289 I object to the inability for me to present a case based on this appraisal. There is nothing I was  
290 made aware of that the expert needed to be here at this time to appear and testify to this fact.

291

292 Daniel: Mr. Chairman, I do have some questions of Mr. Byrnes when he is done with his case in  
293 chief.

294

295 Mayor Chilsen: The Board of Review has a real problem not being able to subpoena authors of  
296 those documents, and that kind of is the crux of this. If you're going to enter evidence in, we  
297 should have someone here who authored that evidence that we can ask questions of, and that the  
298 assessor can ask questions. And that's really the crux of the argument. Am I correct, counsel?

299

300 Sean: Correct. In order to enter evidence and rely upon documents you have to form a  
301 foundation for the document and it has to be subject to cross-examination. That is different than  
302 documents which are self-evident such as a statute, something coming out of a book. There are  
303 probably pages in there that come out of a book. Those are self-evident. But the opinion itself is  
304 subject to cross-examination. Mr. Chair, I would suggest that if Menards doesn't have any more  
305 in its case in chief, then Menards should be open to cross-examination by the assessor at this  
306 time.

307

308 Mayor Chilsen: Let's move to that, then.

309

310 Daniel: Thank you, Mr. Chairman. I am assuming that all of you have copies of the subpoena  
311 that was sent to Menards. I would just like to ask Mr. Byrnes as the representative, did you ask  
312 your client for the subpoena documents?

313

314 Michael: I have a copy of the subpoena, yes.

315

316 Daniel: Did you ask your client for the documents?

317

318 Michael: I received the subpoena from our client, yes.

319

320 Daniel: I'm going to ask you once again, but I'm going to preface this by saying none of my  
321 questions are going to be tricky. I would expect just a direct answer to my questions, and I'm  
322 asking you if you asked your client, if you asked Menards, the representative that you have  
323 contact with, did you ask them for these subpoenaed documents?

324

325 Michael: No, I did not.

326

327 Daniel: Can I ask you why you didn't?

328

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329 Michael: Because I was not made aware of it and I was also not given service for the subpoena,  
330 either. I have no record of the service. The only way I received this was from our client, and the  
331 attorney that we have that represents other properties was copied on the subpoena. I personally  
332 would never receive service for the subpoena.

333

334 Daniel: But your client did, so you know your client received the subpoena.

335

336 Michael: All I have is the subpoena that was sent to me by the client.

337

338 Daniel: We know he did because we've got return receive ...

339

340 Michael: I also did not receive service and I should have received service as well.

341

342 Daniel: I understand. Now, I might have been premature when I talked about a lack of respect  
343 for this Board of Review. It may be just a lack of knowledge. Are you familiar with the  
344 Wisconsin Property Assessment Manual?

345

346 Michael: Yes.

347

348 Daniel: In that Wisconsin Property Assessment Manual, where does it say that your client  
349 doesn't have to answer a subpoena?

350

351 Michael: Nowhere – nothing to my knowledge.

352

353 Daniel: Are you familiar with USPAP (Uniform Standards of Professional Appraisal Practice)?

354

355 Michael: Somewhat, yes.

356

357 Daniel: And are you familiar with the jurisdictional exception?

358

359 Michael: I couldn't quote it for you, if that's what you're asking.

360

361 Daniel: Would you believe me if I told you that jurisdictional exception was you have to play by  
362 the rules of the community that you're in or the state that you're in?

363

364 Michael: I do, yes.

365

366 Daniel: Your client failed to do that, correct?

367

368 Michael: No, the client did not fail to do that.

369

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370 Daniel: So they provided all the documents that were subpoenaed?

371

372 Michael: They provided all the documents that revolve into the value of the property, yes.

373

374 Daniel: What I'd like to do here is hand out copies of the statute ... Now Mr. Byrnes, are you  
375 familiar with the Wisconsin Statutes?

376

377 Michael: Familiar enough, yes.

378

379 Daniel: I'm sorry, what was that?

380

381 Michael: I said I'm familiar enough.

382

383 Daniel: OK. Getting back to the subpoena, do you understand that your client did not provide  
384 all the information that was subpoenaed?

385

386 Michael: I submit that they provided all the information as required toward the valuation of the  
387 property.

388

389 Daniel: OK, required by whom?

390

391 Michael: Required by the subpoena, yes.

392

393 Daniel: Do you have your copy of the letter that was attached to the documents that you sent?

394

395 Michael: Yes.

396

397 Daniel: And does the board have a copy of that letter?

398

399 Cari: They do not. Would you like a copy provided?

400

401 Daniel: Yes. ... And did you prepare that letter?

402

403 Michael: I did, yes.

404

405 Sean: Excuse me, Mr. Furdek. Even though this hasn't been moved into evidence, for the sake  
406 of the record do we want to mark this as an exhibit?

407

408 Daniel: Yes, thank you. I would like this marked as an exhibit, yes.

409

410 Cari: We'll have Exhibit 1.

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411  
412 Daniel: The letter dated June 26, 2015, and if you go down to the fourth item, and do you have a  
413 copy of the subpoena in front of you?

414  
415 Michael: I do, yes.

416  
417 Daniel: If you look at Item No. 4 in the subpoena where we ask for audited financial statements,  
418 including balance sheet, income operating statements, footnotes and auditor's opinions for the  
419 years 2009, 2010, 2011, 2012 and 2013 and 2014 that include the operations of the property.  
420 Now, if you look at your response [it says] "Respectfully deny request." What was the reason  
421 for that?

422  
423 Michael: The property is owner-occupied.

424  
425 Daniel: Do you think that the Board of Review doesn't know that?

426  
427 Michael: I don't know if the Board of Review knows that or not.

428  
429 Daniel: Regardless, the Board of Review requested that information. But you decided they  
430 weren't entitled to it. Is that correct?

431  
432 Michael: That's correct. The property is owner-occupied, and any operating statements  
433 pertaining to the operation of the business is not relevant to the valuation of the real property.

434  
435 Daniel: And that is your opinion – your non-expert opinion?

436  
437 Michael: That's an opinion of every assessing manual in place, for ad valorem tax purposes, for  
438 fee-simple tax purposes, yes.

439  
440 Daniel: That can be debated, but let's get on to Point No. 5 in the subpoena. Detailed operating  
441 statements for the years 2009, 2010, 2011, 2012, 2013 and 2014 in standard accounting format  
442 for the subject, property itemized to include the following: Total gross income itemized by  
443 source, including but not limited to net lease income and any income from any source identified  
444 by source. If income cannot be itemized in each of the categories listed, provide the most  
445 detailed information available. Item B: Total itemized expenses itemized by the source for the  
446 property, including but not limited to taxes, depreciation, mortgage, interest or amortization,  
447 officers' salaries, but not capital improvement expenditures. Capital expenditures include  
448 replacements, improvements and remodeling which materially add to the value of the property or  
449 appreciable extended its life. These costs are ordinarily added to the basis of the improved  
450 property and depreciated over a given lifespan. They are not annual charges and are not  
451 deducted as current expenses. You see that, right, and you read it?

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452  
453 Michael: Yes, I do.  
454  
455 Daniel: And your answer was “Respectfully deny request.”  
456  
457 Michael: Yes, I do.  
458  
459 Daniel: Because in your opinion the board is not entitled to it.  
460  
461 Michael: No. In my opinion, the documents requested do not pertain to the real value of the  
462 property.  
463  
464 Daniel: But if the board thinks that, you still denied them that information.  
465  
466 Michael: Because it’s irrelevant to the valuation of the property.  
467  
468 Daniel: So you don’t think the board knows what they’re doing by asking for this information?  
469  
470 Michael: I didn’t say that. I said it’s irrelevant to the valuation of the property.  
471  
472 Daniel: And if the board requires information, you don’t feel that they’re entitled to it because of  
473 your opinion that it doesn’t provide a light as to what the value of the property is?  
474  
475 Michael: It’s my opinion that the operating statements or any financials pertaining to the  
476 operation of this store does not pertain to the real value of the property.  
477  
478 Daniel: Let’s get on to Item No. 6 in the subpoena to the extent not expressly contained in the  
479 document described above each document containing the following information or information  
480 from which the following information could be derived for the property. A: Net operating  
481 income as of January 1, 2009; January 1, 2010; January 1, 2011; January 1, 2012; January 1,  
482 2013; and January 1, 2014. Item B: Capitalization rate as of January 1, 2009; January 1, 2010;  
483 January 1, 2011; and January 1, 2012; January 1, 2014; and again, January 1, 2014. It looks like  
484 a typo. And your answer was “Respectfully deny request.”  
485  
486 Michael: Correct.  
487  
488 Daniel: Because the board isn’t entitled to that information?  
489  
490 Michael: Again, my response is the same, which is anything pertaining to the financial or  
491 operating statements of this property is irrelevant to the real property value.  
492

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493 Daniel: And that is your opinion, correct?

494

495 Michael: Yes. My opinion is also supported by most assessing manuals and most accepted  
496 practices for assessing purposes.

497

498 Daniel: Like I said, that's up for debate, but OK. Would you please take a look at page 36 of the  
499 statutes? And 70.47 (af), that's on the right column. Mr. Byrnes, are you following?

500

501 Michael: Yes.

502

503 Daniel: It says "No person may appear before the board of review, testify to the board by  
504 telephone or object to a valuation; if that valuation was made by the assessor or the objector  
505 using the income method; unless the person supplies to the assessor all of the information about  
506 income and expenses, as specified in the manual that the assessor requests." Now, this is not  
507 ambiguous. All of the information that the assessor requests you are required to provide. Did  
508 you do that?

509

510 Michael: I provided all the information, yes.

511

512 Daniel: And you provided all the income information and expense information to Menards?

513

514 Michael: There is no income or expense information to provide because the property is occupied  
515 by the owner.

516

517 Daniel: OK. All of the information required. What about all of the information that we require  
518 that you didn't provide? What about all of the information that we request don't you  
519 understand?

520

521 Michael: I provided all the information that was requested that pertains to the value of the  
522 property, yes.

523

524 Daniel: If you look at page 37 of the statutes, this is from 70.47(8)(d). And if you look at the  
525 top paragraph, it starts "The board at such hearing shall proceed as follows." And Item 'd',  
526 70.47(8)(d) [reads] "It may and upon request of either the assessor or the objector shall compel  
527 the attendance of witnesses for hearing, except objectors who may testify by telephone, and the  
528 production of all books, inventories, appraisals, documents and other data which may throw light  
529 upon the value of the property." Now, the board feels that the expenses and the income to that  
530 property, like in Items 4, 5 and 6, may throw light on the value of that property. But you've  
531 decided they're not entitled to that information.

532

533 Michael: I've decided that, again, any financial or operating statements pertaining to this

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534 property are internal and are not relevant to the real value of the property. They are not accepted  
535 in general business practices or any normal assessing practices for ad valorem tax purposes for  
536 assessing purposes.

537

538 Daniel: That is your opinion?

539

540 Michael: My opinion, again, is supported by accepted standard practices of assessing.

541

542 Daniel: And you've decided what the board can consider is relevant instead of providing the  
543 information and letting us make the argument, and then the board can decide whether it's  
544 relevant. You've decided for the board what is relevant information.

545

546 Michael: I've decided that any of the financial operating statements, anything pertaining to what  
547 Menards as a business brings in as profits, anything else is not relevant to the real value of the  
548 property.

549

550 Daniel: If you look at the section of the statute that I read to you where it says "The production  
551 of all books, inventories, appraisals, documents and other data which may throw light upon the  
552 value of the property," what about *all* don't you understand that the board is entitled to?

553

554 Michael: That is not relevant to the real value of the property. Again, this is an owner-occupied  
555 facility. At the end of the day, essentially how many paint cans they sell is not relevant to the  
556 value of the property.

557

558 Daniel: That is your opinion?

559

560 Michael: Again, my opinion is supported by most assessing practices. This is not anything new.  
561 I'm very confused as to why you're requesting internal financial documents.

562

563 Daniel: I understand you're confused. But you agree that you did not follow the statutes.

564

565 Michael: I agree that I provided all the relevant information as requested in the subpoena that is  
566 relevant to ...

567

568 Daniel: I understand. You've decided what's relevant. OK, I get that. Well, I guess knowing  
569 what you know about the statutes you still feel you're acting in good faith?

570

571 Michael: Yes, I do. If there were leases in place or if there was anything else in place I would  
572 have been more than willing to provide that. But there are no leases in place.

573

574 Daniel: Do you know by not providing all those documents that you're violating Wisconsin

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575 Statutes?

576

577 Michael: I haven't spoken with an attorney about what I'm violating or not violating. What I do  
578 know is that I am providing the information as requested in the subpoena that is relevant to the  
579 real value of the property.

580

581 Daniel: Well, I can tell you you're violating the statutes and you can check with your attorney  
582 when you get back. But you are violating the statutes by not providing everything that the Board  
583 of Review has requested.

584

585 Michael: I will say that that is your opinion.

586

587 Daniel: That's the law. That's the law that I just read to you.

588

589 Michael: Are you an attorney? Are you my attorney?

590

591 Daniel: No. I've got some more questions. I don't want to argue with you. Just let me finalize  
592 this: are you familiar with Wisconsin case law?

593

594 Michael: Some of it. As it pertains to this case, it depends. I'm not sure what you're going to  
595 reference.

596

597 Daniel: Are you familiar with the Inextricably Intertwined Doctrine?

598

599 Michael: I am not.

600

601 Daniel: So you wouldn't know if that doctrine requires you to provide income and expense  
602 information?

603

604 Michael: No, I would not.

605

606 Daniel: And you're not familiar with any of the cases that pertain to the Inextricably Intertwined  
607 Doctrine?

608

609 Michael: I couldn't reference anything at the moment.

610

611 Daniel: Have you ever heard of ABKA versus the Board of Review of the City of Montana?

612

613 Michael: I have not.

614

615 Daniel: Allright Parking versus ... I'm sorry. It wasn't Montana; it was Fontana. Allright

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616 Parking versus the City of Milwaukee?

617

618 Michael: No, I'm not familiar with that.

619

620 Daniel: Northridge/Southridge Associates versus ...

621

622 Michael: No, I'm not familiar with that, either.

623

624 Daniel: Waste Management versus the County of Kenosha?

625

626 Michael: No, I'm not familiar with that.

627

628 Daniel: So would you be surprised to know that all of these cases require the income and  
629 expense information to be provided?

630

631 Michael: I have no knowledge of those cases.

632

633 Daniel: All right, thank you. That's all I have.

634

635 Mayor Chilsen: Do you have any direct testimony now?

636

637 Daniel: Yes, I'd like to put on our case now.

638

639 Sean: Before that, does the Board of Review have any questions? And then if he has any  
640 additional testimony then we should close his case.

641

642 Mayor Chilsen: Any questions?

643

644 Ald. Muth: Mr. Byrnes, did you get this material from our assessor – the subpoena?

645

646 Michael: I did not receive it from the assessor, no.

647

648 Ald. Muth: So the representatives or the owner of Menards received the subpoena and didn't  
649 give you a copy of it at all?

650

651 Michael: I do have a copy of it, yes.

652

653 Ald. Muth: You have a copy of it?

654

655 Michael: I have a copy of it, yes. But I did not receive it from the assessor, no, or the law firm  
656 O'Flaherty Heim Egan & Birnbaum. I believe they produced the document.

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657

658 Ald. Muth: So Menards' attorneys, their legal representatives, did they get a copy of this  
659 subpoena, or were they aware that they were subpoenaed to have this information?

660

661 Michael: I do not know who received it in their department. I have no knowledge of that at all.

662

663 Ald. Muth: Is it common practice for Menards to, when they're questioning value or their  
664 assessment, not to comply with whatever the Board of Review ... I guess I'm confused. I've got  
665 some law enforcement background, and I'm aware when I receive a subpoena the court is telling  
666 or I am required to supply this information. If not, I'd better have a real good reason why I'm  
667 not complying with the subpoena. So I'm kind of confused why Menards feels it's not necessary  
668 to supply this information.

669

670 Michael: Well, Menards relies on our expertise to provide the relevant information, which we  
671 provided.

672

673 Ald. Muth: The point is, if you receive a subpoena, if you think it's relevant or not you comply  
674 with the subpoena. I guess that's what's confusing me here.

675

676 Ald. Binash: Mr. Byrnes, how many of these hearings have you appeared before?

677

678 Michael: Four or five, maybe. I honestly don't know offhand.

679

680 Ald. Binash: Would that be in the State of Wisconsin?

681

682 Michael: Yes. This is the first that I've been [to where] we've had any documents that have  
683 been subpoenaed.

684

685 Ald. Binash: I'm sorry. This is the first time ...

686

687 Michael: This is the first time we've had a request for any type of documentation other than  
688 what has been provided via a subpoena.

689

690 Ald. Binash: All right. Thank you.

691

692 Mayor Chilsen: Any other questions?

693

694 Daniel: I have one more thing, Mr. Chairman, before I conclude my examination of Mr. Byrnes.  
695 I just wanted to hand this document out, and this is what they provided because we asked for a  
696 little more clarification on the insurance request in our subpoena.

697

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698 Mayor Chilsen: Excuse me. Should we be marking this as an exhibit?

699

700 Daniel: Yes, mark it as an exhibit.

701

702 Mayor Chilsen: Exhibit No. 2.

703

704 Ald. Muth: Mr. Chairman, the prior documents we received ... Are they in, too?

705

706 Mayor Chilsen: The statute documentation, should that be entered in as an exhibit?

707

708 Sean: No.

709

710 Daniel: I just want to point out to the Board of Review this is the manner we got the  
711 information. And if you brought your magnifying glass with you, the thing that I want to point  
712 out is if you look at the third blank from the left or the second blank from the right, Mr. Byrnes,  
713 can you tell us what you blanked ... Did you blank this out?

714

715 Michael: Yes.

716

717 Daniel: So you took it upon yourself to blank this out?

718

719 Michael: Redacted, yes.

720

721 Daniel: And your client provided this information upon your request?

722

723 Michael: Yes, this was the information that was provided to us.

724

725 Daniel: So you did talk to your client about the subpoena?

726

727 Michael: I talked to him and requested insurance information. So this is what I have from the  
728 client.

729

730 Daniel: And you didn't ask them for any other information?

731

732 Michael: I provided all the information that was requested in the subpoena.

733

734 Daniel: And who did you talk to at Menards?

735

736 Michael: The tax manager.

737

738 Daniel: What's his name?

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739  
740 Michael: His name is Dan Mischlig.  
741  
742 Daniel: Dan Mischlig? OK, thank you. If you look at the stuff that you blanked out – the third  
743 column from the left, second column from the right – could you read the heading on that?  
744  
745 Michael: The heading is MNE, Average Retail Inventory, Business Income, and TIV.  
746  
747 Daniel: The Business Income is the one I was referring to. So you took it upon yourself to blank  
748 out the business income?  
749  
750 Michael: Correct, yes.  
751  
752 Daniel: Menards provided it, and you decided to blank that out?  
753  
754 Michael: Yes, that's correct. It's not relevant to the real value of the property.  
755  
756 Daniel: I understand. That's your opinion. I've got that.  
757  
758 Michael: Again, my opinion that's supported by standard assessing practices.  
759  
760 Daniel: Thank you. That's all I have.  
761  
762 Mayor Chilsen: Thank you. Anyone else have any questions?  
763  
764 Sean: I have one question. Did you ask Mr. Fishley for copies of any service contracts or  
765 agreements with respect to the property as noted in No. 7 of the subpoena?  
766  
767 Michael: All the information that we received from the client related to the property, we have.  
768 So if there's any ... They complied fully, so any of the information that was in the subpoena that  
769 was requested that was relevant to the valuation of the property was provided.  
770  
771 Sean: You've testified already that you had a discussion with Mr. Fishley with respect to the  
772 information in the subpoena, correct?  
773  
774 Michael: I provided the information as requested in the subpoena.  
775  
776 Sean: OK, that's not what I'm asking, correct?  
777  
778 Michael: Correct.  
779

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780 Sean: What I'm asking is about your conversation with Mr. Fishley, correct?

781

782 Michael: Yes, you are.

783

784 Sean: OK. You had a discussion with Mr. Fishley, correct?

785

786 Michael: It's Mr. Mischlig, but yes.

787

788 Sean: OK. And when you had that discussion did you discuss information that was requested  
789 pursuant to the subpoena?

790

791 Michael: I provided all the information that was requested in the subpoena.

792

793 Sean: I'm asking about your conversation. You had a conversation, correct?

794

795 Michael: I provided all the information that was requested in the subpoena.

796

797 Sean: Was your conversation by telephone or by email?

798

799 Michael: Again, I provided all the information as requested in the subpoena.

800

801 Sean: Are you refusing to answer the question?

802

803 Michael: I'm not refusing to answer the question. But any correspondence that pertains to  
804 myself and my client is proprietary.

805

806 Sean: Actually, it's not proprietary.

807

808 Michael: Yes, it is proprietary.

809

810 Sean: You are here testifying, correct, under oath?

811

812 Michael: Correct, yes.

813

814 Sean: OK. Then you are directed to answer the question. Did you ask ... I will reference the  
815 very specific question I have, and that is with respect to the item in Section 7 of the subpoena.  
816 Did you request copies of service contracts for the property that pertain to any period during  
817 2009 to the present date?

818

819 Michael: I don't know if we had a specific discussion regarding that particular question. I  
820 couldn't tell you whether or not we discussed that one question. I am not trying to aggravate you

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21

821 in any way.

822

823 Sean: Did Menards identify for you any service contracts for the property that pertained to any  
824 period during 2009 to the present date?

825

826 Michael: No, I do not have any information as regards to Question 7.

827

828 Sean: So they did not provide you with any knowledge of service contracts for the property that  
829 pertained to any period from 2009 to the present date, correct?

830

831 Michael: No, we do not have anything. If it was relevant to the information I presume it would  
832 be provided to us.

833

834 Sean: Despite your discussion with them, correct?

835

836 Michael: Despite my discussion with them, yes.

837

838 Sean: Thank you.

839

840 Daniel: I would like to put on my case in chief.

841

842 Mayor Chilsen: Absolutely.

843

844 Cari: We should let him recap ... He has the opportunity to recap before we would close the  
845 testimony.

846

847 Michael: And again, please do not take any of the conversations we had as disrespect to the  
848 board in anything. But we need to make sure that we stay on point and understand that any  
849 internal financing or any internal – again, like how many paint cans they sell – what their internal  
850 operating statements area are not relevant to the real value of the property for assessing for tax  
851 purposes. Now, if there was some other purpose we were here for, then I imagine that it might  
852 be relevant to that. But for these purposes – their inventory and how much they sell – is not  
853 relevant to what the value of the real property is actually worth. Every board that I've worked  
854 with, every assessor I've spoken with, every appraiser that I've ever worked with and spoken  
855 with agrees that when it pertains to the income of a property, it's based on the income if a lease  
856 is in place, no matter what type of lease that is. But it's not what the value of the property is  
857 based on how much money the business can produce within that property. It's the difference  
858 between what's owner-occupied and what's not owner-occupied. Now, if Menards was leasing  
859 this facility there would have been no problem. I would have provided all the information that  
860 we would have had on that regarding any leases, but there are no leases. There's nothing for me  
861 to give you pertaining to the value of the property as it would pertain to the value based on for

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862 tax purposes. If you look through appraisals or if you look through any other accepted practices,  
863 when people look at comparable properties they look at comparable leases. They want to know  
864 what leases are in place. So when those income opinions are created they're based off of leases.  
865 They're not based off of how much money like a PetSmart was producing. That wouldn't be  
866 relevant to the actual value of the property. And again, I just want to reiterate that I do not mean  
867 any disrespect to anyone here or the assessor. But again, it remains that the value of the property  
868 as it pertains to the financial statements is irrelevant. That's all.

869  
870 Mayor Chilsen: Mr. Assessor, would you please go forward?

871  
872 Sean: Excuse me, Mr. Chair. Could we take a two-minute recess? I want to speak to the Clerk.

873  
874 Mayor Chilsen: Yes. We'll stand recessed for two minutes.

875  
876 Mayor Chilsen: OK, I think we can go back into session now. Cari, you had a question?

877  
878 Cari: Well, it's not really a question. It's just kind of a statement because I'm assuming that all  
879 the presentation that Michael Byrnes has done for the Menards property is based on adjusting the  
880 value of the property to what is stated on the objection form, which is \$5,900,000. It's just that  
881 amount specifically wasn't stated and I wanted to make sure that everybody understood what the  
882 value was that they were stating the fair market value of that property is.

883  
884 Mayor Chilsen: Is that correct?

885  
886 Michael: She said that you didn't understand.

887  
888 Cari: When you're listing on here on the objection form, Question No. 5 says "In your opinion,  
889 what was the taxable value of this property on January 1 of the year being appealed?" The  
890 amount stated on there is \$5,900,000. I wanted to make sure all your testimony is to that fact.

891  
892 Michael: It is, yes.

893  
894 Cari: OK, thank you.

895  
896 Michael: Sorry, I misunderstood the question.

897  
898 Mayor Chilsen: Thank you. Mr. Assessor, would you please ...?

899  
900 Daniel: Thank you, Mr. Chairman. I'm going to give the Clerk copies of my report to hand out.

901  
902 Cari: Do these have to be Exhibit 3?

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903  
904 Daniel: Yes.

905  
906 Mayor Chilsen: Exhibit No. 3.

907  
908 Daniel: My name, just for the record, is Daniel Robert Furdek. My resume is in the back of the  
909 report, and I am presenting myself as an expert. I'm just going to give you the short version of  
910 my credentials. I have an undergraduate degree in real estate. I also have an undergraduate  
911 degree in finance – a BBA from the University of Wisconsin-Milwaukee. I also have a Master's  
912 Degree in finance. I've been doing this work ... I would just like to state that real estate is a  
913 subset of finance, and real estate is a very easily analyzed investment instrument. I've been  
914 doing this work for over 20 years. I did it for 11 years as the senior property appraiser for the  
915 City of Milwaukee. Like I said, I am presenting myself as an expert. I will address Mr. Byrnes'  
916 idea of what is relevant to ad valorem valuation, but first I want to get into my report. I'm going  
917 to kind of go over it quickly, and when I get to the important stuff I'll take a little more time.  
918 But if I go too fast for any of the board members you can stop me and I'll go over the areas that  
919 you may have a question on. I inspected the property the day before yesterday, and I've  
920 prepared my final valuation on the property. On page 3 it states what it is – \$16,900,000. If you  
921 go through the report, starting on page 5 this is just a summary of the facts and conclusions in  
922 this report. A lot of this is just physical data; it's not valuation stuff. It's just the legal  
923 description. There are a number of parcels involved here – more than just the main parcel. I've  
924 listed the tax identification numbers of all the parcels, and we have included that in the valuation.  
925 It's all important, but some of it is what is referred to as “boiler plate,” like the intended use of  
926 this. It's for the Board of Review. It's for a possible Circuit Court action. Stuff like that I'm  
927 going to kind of skip over. We have the improvements on page 6, and the square footage is  
928 listed as 162,813. Page 7 starts with the highest and best use. This is a very important concept.  
929 I'll talk a little bit more about that as we get into the report. Page 7 and 8 talks about some  
930 definitions that are important to valuation work, but most of it I'm sure you've heard before and  
931 are familiar with. Page 9, the limiting conditions and assumptions are listed. It's what is called  
932 more “boiler plate.” It is important; it's what I did do and what I'm not going to do. The scope  
933 of the work here on page 11 outlines what I'm doing in this report. It's pretty standard. Page 12  
934 is how we go about doing our work, and I've done three approaches to valuation here – the cost,  
935 the sales and the income approach. Page 13 is more data of market area analysis pertaining to  
936 that site and around Onalaska. Market area location and boundaries ... I've listed here market  
937 area and property characteristics. A lot of times we talk about the market area for that particular  
938 store. I don't like to get into that in heavy detail because after all, Menards put it there. They did  
939 the research to know that that store is going to be successful. What I like to talk about more is  
940 the market for selling that property – who would be a buyer for it? It's not an issue in this case,  
941 but those are the important concepts – not whether or not they're going to sell enough paint and  
942 enough widgets. It's, who would buy that property? I've listed here some general retail  
943 properties. The closest metropolitan area is Madison, so I've used that data, which correlates

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944 with the Onalaska data. It lists what the typical lease rates would be in this area. They average,  
945 if you look on page 16, on the far right column they average around \$12.60. Page 17 lists more  
946 of the retail markets in an Onalaska similar neighborhood. Page 18 is the asking rates for  
947 commercial retail property like Menards in this area, in the Madison metropolitan area. Page 19  
948 looks at the population, the housing and the income trends. One thing I'd like to point out is that  
949 Onalaska does have a very high, compared to the rest of the state and probably other states, very  
950 high median and average income. I'm sure that Menards considered that when they put that  
951 store up. You don't want to put up a store where people can't afford to buy your product. Page  
952 20 is more demographic information and your major employers here. Page 21 is about the  
953 unemployment rates. It's all important information, but it doesn't get to the heart of my report.  
954 Page 22 is just a land use map. Page 23 is a map showing the location of the property, which I'm  
955 sure you're more familiar with than I am. The property description is on page 24. The flood  
956 zone is typical in a report. It's not in a flood zone; I've listed that. The site aerial view is on  
957 page 26. The tax parcel map is also on that page. It just gives you a sense of the boundaries that  
958 have property, and if you look on the tax parcel map there are a number of properties that the  
959 main parcel is more in the center. But there are key numbers around that that are the subject of  
960 this assessment. Page 27 is more physical information on the property. I don't think there's a  
961 dispute as to what is there physically. Page 29 is just pictures of the property. Their main  
962 entrance is the top picture, and their lumberyard entrance ... This is a very ... Even though La  
963 Crosse has a similar size store, this is kind of like a mega Menards. They may be going to bigger  
964 stores, but typically the ones I've seen and the ones I've appraised are in the 80,000 square foot  
965 area. This property is twice that size. On the top here of page 30 you have a picture of the  
966 garden center, which I believe was a new addition in 2000 for a couple million dollars that it cost  
967 to put this up. The bottom picture is just a typical aisle. I'm sure you're familiar with this  
968 property; you've probably been in it 100 times. Reports typically show a street view. This is  
969 very easy access to it – the street view looking west on Riders Club Road and the street view  
970 looking south on Sand Lake Road. Page 32 is an aerial view. More data on assessment and  
971 taxes; I'm sure you know a lot about that. The zoning requirements are on page 34. Page 35 is  
972 where you get into critical concepts. The highest and best use is very critical, and I list here the  
973 four requirements that you look at for a highest and best use determination. To get to the crux of  
974 the matter, the closer properties are in identity to the subject, the better they are. That's what  
975 highest and best use instructs you to do. Now, it's not a perfect world. We don't have perfect  
976 comps. I'd like another Menards across the street exactly the same dimensions, looks exactly the  
977 same, the same age, it sold for \$17 million. That would be easy to say the one across the street is  
978 worth \$17 million, but we don't have a perfect world. That's why we have to get comparables.  
979 But one concept in highest and best use analysis ... And really, highest and best use refers to the  
980 land. Now, would a Menards store put up on that land in today's market be successful? Does  
981 that land have a return to Menards? That's really what page 37 shows and what we try to prove.  
982 So when we say the highest and best use of a property as vacant is a Menards, we've proved it  
983 here because we've taken the typical leased income on a property like that. Now, we look at and  
984 we have statistics on triple-net leases where the owner of the property really doesn't do anything.

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985 The lessee does all the maintenance on the property, pays the taxes. The only thing that the  
986 owner has to do is open up the check at the end of the month. What I've analyzed here is the  
987 typical lease income that that property would generate. We've allowed 1 percent in management  
988 expenses, and we know from data what the cap rates are. We've taken this information, and later  
989 on in the report I'll show you where I've calculated what it would cost to build that store new  
990 today. What are just the improvements? What would they cost? We've capitalized that at  
991 today's capitalization rate. That amount would come off the net operating income to determine  
992 whether or not that land could produce a return to the owner. In this case, that type of store  
993 would lease for enough money that, in today's market, it would be profitable to build that store.  
994 So that land, as vacant, is good for a Menards store. A lot of times shopping centers, because  
995 they're going out of fashion, it pays to keep it there because the highest and best use of the land,  
996 as vacant, is still not as much as that land with the improvement on it. But if that land was  
997 vacant, it would not pay to build a shopping center. In this case, it would pay to build a Menards  
998 as it's constructed the way it is. So we've done the proof on that, that the highest and best use of  
999 the land, as vacant, is to put up a Menards store. And naturally, the highest and best use, as  
1000 improved, is still a Menards store. Now, that's an important concept.

1001

1002 Sean: Excuse me, Mr. Furdek. Because you've gone through a lot of information, do you mind  
1003 stopping and taking questions before you go into the value methodologies?

1004

1005 Daniel: Yes. I apologize for not telling the board that if they do have a question to just interrupt  
1006 me.

1007

1008 Mayor Chilsen: I just have one question. Triple Net Lease – what does that mean?

1009

1010 Daniel: Triple Net is a ... It's never spelled out, but what the common knowledge is is a Triple  
1011 Net Lease means that if I'm the owner of a property and I lease it to you on a Triple Net basis,  
1012 you're going to pay all the expenses to that property. You're going to do all the maintenance on  
1013 that property, and you're going to pay the taxes on the property. You're going to send me an  
1014 insurance policy that names me as an insured because you're going to pay the insurance on that  
1015 property. You're going to pay all the expenses on that property, and all I have to do is put the  
1016 check in the bank at the end of the month. That's what a Triple Net ... Typically people think of  
1017 it as expenses, taxes and insurance, but it really includes ... You spell that out in the document  
1018 itself where the tenant pays for everything. That's what all the statistical information that I'm  
1019 reporting, that is the way that these properties are leased where the tenant pays for everything.  
1020 That's where I get the amounts from.

1021

1022 Mayor Chilsen: OK, thank you.

1023

1024 Daniel: On page 38 it talks a little bit more about the methodology and what each method  
1025 contemplates, what it takes, the cost approach, the land value. We've done a land value by a

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26

1026 sales comparison approach. Page 40 lists the comparables that I've used. Page 41 lists where  
1027 they are on a map. Page 42 is my land comparables grid. I took these sales and compared them  
1028 to the subject. That land, as vacant, 26.43 acres is worth about \$225,000 an acre by my sales  
1029 comparison approach. That 26.43 totals to a rounded value of \$5,900,000. That's how I come  
1030 up with the land value on this property. Page 43 is just an explanation of my land adjustments,  
1031 which I didn't have to make any. Page 44 talks about the sales comparison approach to land  
1032 valuation, and it lists my conclusion here of \$5,900,000. Also on that page we start with the cost  
1033 analysis. I'm basically listing what I considered in the cost analysis. My conclusion to build this  
1034 property new and then actually depreciate it, what it's worth today by the cost method is  
1035 \$17,500,000. I'll go through the details here. On page 46 I've listed itemized the cost  
1036 calculation from the Marshall Swift Cost Guide. The Cost Approach Summary is on page 47.  
1037 That's just a summary of page 46, adding in the site improvements. Now we also have other  
1038 elements on that property – the attached garden center, the detached storage building. I've added  
1039 the typical cost of those, and I figured a 5 percent developer's cost to come up with it would cost  
1040 to build that store new today, I'd say \$13,087,216. That's what it would cost to build new. What  
1041 is that Menards store worth by the Cost Approach? You have to take off if there's any physical  
1042 depreciation. So what I've said is even though that building was built in 1995, it's 20 years old  
1043 physically. But effectively, how old is that property? The typical life Marshall Swift puts on it  
1044 is 45 years. I would say it has an effective life of five years, so that's how we get the 11 percent  
1045 depreciation, which is just common sense. When I looked at the store, I talked to the manager,  
1046 Randy, and it's a beautiful store. It's very well-maintained. If somebody said it was built last  
1047 year you would believe it the way it's maintained. The manager stuck out his chest; he's very  
1048 proud of how he maintains that property. So there's a difference between a physical age and an  
1049 effective age. And effectively, that age is only five years old. The site improvements, they're  
1050 replaced sooner than the main improvements, the building. I calculate that as 25 percent where  
1051 you would have to replace the asphalt and stuff. I would say that's a quarter used up. So we  
1052 have a physical depreciation of \$1.3 million, \$150,000 for the site. You subtract that from the  
1053 cost new and you have an \$11,608,989 value to that property today as the improvements as they  
1054 exist. To that you add the land value, and that's how we come up with the \$17,500,000 rounded.  
1055 Now, the sales comparison approach, even though my personal preference is income. Because  
1056 we have to follow the statutes, the statutes say if you have a sale of the subject and it's a good  
1057 sale, that's the best indication of value. In the absence of a direct sale to the property, you have  
1058 to consider other comparable sales. In what we call the hierarchy of valuation, the state requires  
1059 us to say if we have a good sales comparison approach, really there's case law where you can't  
1060 even consider the other approaches even though I would like the income approach, especially  
1061 with my educational background. And I know that buyers look at income. That's how they buy  
1062 property. But the statutes are correct in the fact that that is represented in the sale of the  
1063 property. So that's why they say if you have a good sales comparison approach, that's what you  
1064 have to hang your hat on. And that's what we're getting into now. Now, this is kind of an  
1065 important page, page 49. This is my sales comparison grid on this property. It shows the sale  
1066 prices of the properties, the dates, and the main adjustment. Ideally you don't want to have a

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1067 whole lot of adjustments because the less adjustments you have, the closer your comparables are  
1068 to the subject. And the only adjustment that's made here is the economic adjustment. Really,  
1069 that's the important one, and that's the one that kind of tells you everything. If you just think  
1070 about, let's say an apartment building. The two apartment buildings are identical, except one has  
1071 an elevator. Well, it's going to sell for probably a little bit more money. Now, when it sells for  
1072 ... and it's going to lease for more money. So when you know that the differences in the income  
1073 between two properties, basically you don't have to make an adjustment for that elevator because  
1074 that landlord is getting, say, a dollar more per square foot because his tenants don't have to walk  
1075 up the stairs. They can ride in an elevator. That's what it's worth. So when you capitalize that  
1076 difference, that's how you can make a comparison between the two properties. You don't have  
1077 to adjust for the elevator specifically, and you don't have to adjust for one has block and one has  
1078 brick. When you know the differences in income, all of that is incorporated in the sale price. All  
1079 of the experts that buy and sell properties like this look at what it generates in income. And if  
1080 you know that, you capitalize that and that's why they pay 'x' amount of dollars for a property.  
1081 That's what I've done here. I've taken the difference in income on these properties that are  
1082 comparable, and what I've come up with is a value of \$16,900,000 after making all of these  
1083 comparisons, taking an average of the average of \$16,933,155, the median price of \$17,017,000.  
1084 This is a very tight range, so I've taken an average of that range and I've rounded it to  
1085 \$16,900,000. That's what we get by the sales comparison approach. On page 50 I've listed the  
1086 comparables that I've used. Page 51 through page 58 is just a picture and a little more  
1087 description of each comparable. Some of these, we know what they were sold for, what the cap  
1088 rate was. It was listed, and that's on the report here. And when I've had actual information I've  
1089 used the actual information. The courts prefer actual information, and instead of making up  
1090 information or pretend information or you have to guess, if you know what the income is to a  
1091 property you don't have to estimate it. That's why it was so important that we get the income  
1092 information from Menards, which we didn't. But we have good statistical information as to what  
1093 the lease rates should be in order to make my comparison. On page 59 I just listed the map here.  
1094 It shows the map and the comparables in relation to the subject property. They're all in similar  
1095 neighborhoods. Page 60 lists the adjustment factors that we would use, and the only one that I  
1096 used is the economic adjustment, which is also what I call a location adjustment. The way to  
1097 think about that or the example that I give to think about is if you had a hot dog stand in the  
1098 middle of an Iowa cornfield and you have the identical physical hot dog stand in the middle of  
1099 Times Square. What is the difference in those properties? It's location. You're going to sell  
1100 more hot dogs in the middle of Times Square than you are in the middle of a cornfield. So the  
1101 economic adjustment is the location adjustment, and I've spelled out here how I've made that  
1102 adjustment. I've used an example, Comparable No. 9, how I've adjusted the net operating  
1103 income. And if it's superior or inferior determines what the adjustment is either negative or  
1104 positive in the report. If the property is inferior, it's a plus add to the value of the property. If  
1105 it's superior, then you would subtract that value from your comparison to make it comparable to  
1106 the subject property. All of the comparables are compared to the subject property. And finally,  
1107 on page 63 I just reiterate my conclusion of value \$16,900,000. My favorite approach is the

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1108 income approach, and the reason you do three approaches is it validates your main sales  
1109 comparison approach. If you come up with a cost of \$35 million and a sales comparable  
1110 approach of \$15 million and an income approach of \$45 million, you've done something wrong.  
1111 All three of these approaches come within a similar range. Otherwise you have to look at your  
1112 information and say, 'I've done something wrong.' Investors do this, too. They look at  
1113 properties and they say, 'Why should I buy this property when I can construct one from scratch  
1114 for less money? Vice-versa, here is what it costs me to build this property.' Typically the cost  
1115 approach is the highest. That's why they prefer to buy a building, because it costs me \$20  
1116 million to build something. I can buy it for \$15 million. It's not a hard financial decision to say,  
1117 'I'm better off buying it.' But page 62 starts my income approach, how I've got the  
1118 capitalization rate. We get it from three methods. We take it from surveys. On page 64 I've  
1119 actually taken it from other comparable improved sales. We come up with an average cap rate of  
1120 7.5, average rental rate on these comparables of 13.54 per square foot. Page 65 just describes the  
1121 capitalization rate process, how you go about doing it. Page 66 is another method that I've  
1122 included. I've really done it three different ways. I've looked at comparable sales and what the  
1123 cap rates are there. I've developed a discount rate development by the band of investment  
1124 mortgage equity method if you have to go out and borrow money what you would have to  
1125 borrow it at today's typical rates, how much you want for an equity return. That's all laid out  
1126 here, and I've averaged it to a 7.5 cap rate. The body of the report explains exactly how to do it.  
1127 If you have trouble going to sleep, just read this and you'll probably zonk out in a second. Page  
1128 67 is the survey method. So we've checked the survey method to see if the comparable sales  
1129 we're using, to see if the discount rate that we've developed – how close is it to the survey  
1130 method? This used to be Korpacz; it's now Price Waterhouse because they bought out Peter  
1131 Korpacz. On a national net lease basis, the January 1, 2015 quarter cap rates are between 6 and  
1132 8.5, with an average of 6.93 percent. It's lower than the cap rate I used. So the survey method,  
1133 the mortgage equity method, and the comparable sales method, direct from the market, all kind  
1134 of confirm the 7.5 percent capitalization rate that I used. Even though all of the rates are higher  
1135 than \$8 a square foot, I've given Menards considerations for economies of scale. That is a big  
1136 store. Typically smaller stores rent for more per square foot. That's a generalization not always  
1137 true, sometimes true. But generally, smaller is more per square foot than larger. Typically you  
1138 can buy, say, a warehouse that is a million square feet for less per square foot than a warehouse  
1139 for 100,000 square feet, although that maxim doesn't always hold true. Prior to the condo crash  
1140 developers were paying more per square foot for a larger warehouse. They were converting  
1141 these warehouses to condominiums. We did a study in Milwaukee, and they actually paid more  
1142 for a larger property because they could put more condos into that development. So these  
1143 maxims that typically larger stores sell for less per square foot or lease for less per square foot  
1144 than smaller stores has to be proven by the market evidence. In this case I used a very  
1145 conservative amount – \$8 a square foot. The market has shown us that the average rate is about  
1146 \$12 a square foot. Had we gotten the income information from Menards we could have taken a  
1147 look at that and we know what somebody would lease their property for based on their income.  
1148 We know if they're making a million dollars a year they're not going to lease that property for

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1149 \$100,000. They'll hire a manager and continue to operate that store. So there is a direct  
1150 relationship between what the income is on a property and what it leases for. But I've used a  
1151 very conservative estimate here of \$8 a square foot to come up with \$1,302,504. Now, this is on  
1152 a triple net basis, so there are no expenses. Typically the expenses that you have on real estate  
1153 are listed here. There are a lot more, but on a triple net lease you don't have any expenses. If it  
1154 wasn't a triple net lease, if it was a gross lease, then that dollar amount would be more than \$8.  
1155 So if you had to deduct the expenses the net operating income would come pretty close to the \$8  
1156 a square foot. Landlords and owners, they're not dumb. When they rent a property, if you want  
1157 a gross lease they'll give it to you. But they know what they want in the end in their pocket. A  
1158 triple net lease is a lot cleaner to analyze. The taxes are paid for. We don't have to load the cap  
1159 rate because the owner is not paying the taxes; the tenant is. That's why we don't load the cap  
1160 rate in a triple net lease. Likewise, in a single property tenant lease we don't take off a vacancy  
1161 rate. It's different if you own an apartment building and you have 100 tenants. You know that 5  
1162 percent of them are going to be vacant or moving, so you have a vacancy rate. In a single-tenant  
1163 property, any vacancy is a default. You're going to have zero vacancy in a single-tenant  
1164 property. We figure the income, less the expenses, we have a net operating income of  
1165 \$1,289,479. That number capitalized comes out to \$17,100,000. We've explained before how  
1166 we've determined the cap rate. This is a very simple concept – value equals income over rate.  
1167 You've probably heard of the IRV formula. It's very simple. But if you get into it you could  
1168 study it for years, but it tells you everything. So if you understand that income divided by rate  
1169 equals value you know everything there is to know about finance. Page 69 has my conclusion  
1170 here of \$17,100,000. That is what is called a direct capitalization rate. It's simply capitalizing  
1171 the net operating income by the capitalization rate. There's another way to do the income, and I  
1172 like the discounted cash flow. The manual talked about this is how investors think of their  
1173 properties, how a buyer would look at a property. They're looking at, 'How much am I going to  
1174 make over so many years?' and, 'What is the cap rate? What does it cost me to own that  
1175 property?' What they want to earn on the property, what it costs them to borrow to get that  
1176 property. That's what all goes into the cap rate.

1177

1178 Mayor Chilsen: Would that also be the net present value?

1179

1180 Daniel: That's what this is. Now, when you have a triple net lease, and this one, assuming that  
1181 the payment stays level for 10 years, typically that's the holding period that investors would use  
1182 to look at their investment – how much am I going to make? How much on my return? What's  
1183 it worth to me over that period and not over a lifetime? Typically there's a 10-year holding  
1184 period. You can have a little bit longer or a little bit less, but 10 years is typical. These are level  
1185 payments, and we've capitalized the last year because that would be what the building would sell  
1186 for. That's what I'm saying – if I capitalized that last year's income just like I did on my direct  
1187 cap, that's what that building would sell for 10 years from now. But money 10 years from now  
1188 is not worth as much as it is today. That's why we discount it. You can see that under the  
1189 present value column the rate goes down as we go further out in years. That lower number times

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1190 the cash flow shows you that that money is worth less out in the future than today. But if you  
1191 capitalize that last year at the same rate that you used for your cash flows, and it's a level  
1192 payment, the numbers come out the same. This just shows that the discounted cash flow and the  
1193 direct cap will be equal when the payments are level. Typically you may have an owner may  
1194 look at, like Menards, how many widgets am I going to sell? How much paint am I going to  
1195 sell? What is my net operating going to be? It may fluctuate over the years. That's why you  
1196 may, when you have a fluctuating income stream, you may change your discount rate from your  
1197 capitalization rate. In this case, when you have level payments the cap rate is the same because  
1198 you don't have fluctuating income streams. You want more information on this, you come to my  
1199 class on discounted cash flow. That's it there. My final reconciliation is on page 72, and I've  
1200 just listed the land value that we determined previously, listed the cost approach, listed the  
1201 income approach by the direct cap and the discounted cash flow. But in the center is the sales  
1202 comparison approach. Under value conclusion I give my reasons and what I used, and I'm  
1203 following the statutes. The statutes say if you have a good sales comparison approach, that's  
1204 Tier 2. We don't have a sale of the subject, so we are required by law to use the Tier 2 evidence.  
1205 Even though I have Tier 3 evidence, which is the cost and the income approach, the statutes  
1206 direct the assessor to use the sales comparison approach. That's what I've done. I've listed here  
1207 on the third paragraph down, 70.32, that explains how real estate is valued. And I've really put  
1208 in brackets here – those brackets are ours – and it shows what the courts have determined as the  
1209 hierarchy, the 1, 2, 3 that an assessor is required to use the value of property. Even though I like  
1210 the income approach I'm bound by the law to use the sales comparison approach if I have a good  
1211 sales comparison approach. So my final conclusion of value is, using the sales comparison  
1212 approach, \$16,900,000. The rest of the report is just my certification, which is required in the  
1213 report, and my resume or curriculum vitae. Normally I would say that the taxpayer did not put  
1214 on a case, so normally I could just move to sustain the assessment because they didn't overcome  
1215 the presumption. But in this case I'm asking the board for an increase on this property. And  
1216 what I'd like to go through is on page 37 of the statutes that I handed out ... I'm sure the board is  
1217 aware of this. I'm just reading it for the record on 70.47 (9)(a): "From the evidence before it the  
1218 board shall determine whether the assessor's assessment is correct. If the assessment is too high  
1219 or too low, the board shall raise or lower the assessment accordingly and shall state on the record  
1220 the correct assessment and that that assessment is reasonable in light of all the relevant evidence  
1221 that the board received." I'm sure that the board is aware of it; they've taken the time to take the  
1222 classes. But this is not something that is not required. The statute says "shall." So if you  
1223 believe that the value is what I've presented – \$16,900,000 – you're required to raise that  
1224 assessment. If you think the value is \$5 million as the taxpayer presented, then you're required  
1225 to reduce the assessment. I'm asking the board to raise this assessment because that is the  
1226 correct value of this property. These assessments are done by mass appraisal, which is accepted  
1227 by the uniform standards of professional appraisal practice. When we have an objection on a  
1228 property, we have to take a closer look at those properties. That's why we do a single-property  
1229 assessment. In this case, that's exactly what we've done. It shows that our mass appraisal  
1230 assessment was incorrect. When we do have something that's incorrect we want to make it

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1231 correct. Likewise, I've already come to the Board of Review in Milwaukee where I've asked for  
1232 a property to be reduced in value because we've made a mistake. We didn't pick up the fact that  
1233 the garage might have burned down or something. But whatever it is, the purpose of our job, and  
1234 the purpose of the Board of Review, is to make sure that everybody's at a fair market value. It's  
1235 important to the other taxpayers in the community. Even if I like somebody I can't give them a  
1236 break. If I don't like them I can't assess them more. This isn't a punitive measure. Now that  
1237 we've taken a look at this property and determined what the value is, this is what we've come up  
1238 with. It's not fair to the other taxpayers to give somebody a break because everybody that  
1239 doesn't pay their fair share, somebody has to pick up that difference. That 95-year-old woman  
1240 on Social Security is going to be picking up this difference if you don't change the assessment,  
1241 which I am asking you to do. Finally, on page 36, I would just like to point out in the left  
1242 column on 70.47(7)(a), the section that I've highlighted, it says "No person shall be allowed in  
1243 any action or proceedings to question the amount or valuation of property unless such written  
1244 objection has been filed and such person in good faith presented evidence to such board in  
1245 support of such objections and made full disclosure before said board, under oath of all of that  
1246 person's property liable to assessment in such district and the value thereof." The important  
1247 thing here is the good faith. I'd like to go on record stating that Menards did not put on a good  
1248 faith case. Whether Mr. Byrnes has disrespected you or just has the lack of knowledge of the  
1249 law, that's open for debate. But the fact that they didn't put on a case because they didn't bring  
1250 their professionals here, and they didn't supply all the information that was requested in the  
1251 subpoena. ... Now, they can say that they acted in good faith because they know what's more  
1252 relevant than the Board of Review and they know all of the valuation law and all of the ad  
1253 valorem law. Yet they don't know anything about the case law in Wisconsin. They don't know  
1254 anything about the Inextricably Intertwined Doctrine. They don't know anything about the  
1255 Allright case, which I was the assessor that was a published appellate decision that said that  
1256 income to the property is inextricably intertwined with the value of that property, just like the  
1257 other cases did. But I have intimate knowledge of that case because I was involved in it. So I  
1258 would like to ... I know the board may not make their decision now, but I would just like to go  
1259 on record and I would hope that the Board of Review would agree with me that they did not put  
1260 on a good faith case. And I hope they would agree with me on my value of \$16,900,000 and  
1261 would properly, as the statutes require, raise that assessment to \$16,900,000.

1262

1263 Mayor Chilsen: Thank you. Mr. Byrnes, would you like to cross-examine?

1264

1265 Michael: I would, actually. Your comparable sales – and I appreciate that you've made  
1266 adjustments for all of those – I fail to see how these comparable sales are relevant to the  
1267 property. Our subject is 162,000 square feet. The closest one that you have in size is 103,000  
1268 square feet. If I'm a buyer and I'm coming in to purchase this property, if I need something like  
1269 the size of Menards I need to buy a property that's that size. So I fail to see how all these  
1270 properties, which are in some cases less than half the size of the subject, are actually comparable  
1271 to the property.

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1272  
1273 Daniel: These properties generate income based on square footage. A smaller property would  
1274 generate less income than, say, this mega Menards. That's why we've made an economic  
1275 adjustment. A buyer of the property, if they couldn't find it, it would be easy ... In a perfect  
1276 world, if we had a 162,813 square foot Menards right across the street or in the same  
1277 neighborhood, or we had a 162,813 square foot Wal-Mart in the community that just sold ... The  
1278 problem is I didn't have comparables that were that large. That's why we make an adjustment in  
1279 the sales comparison method. We don't just take the sale price, per se. We make adjustments,  
1280 and that's what I've done. For the inferior properties I've added value. If there are any superior  
1281 properties I've subtracted value.

1282  
1283 Michael: Unfortunately since I can't bring any evidence at the moment, I would have to reiterate  
1284 I know that there are other stores within Wisconsin that are comparable in size to the subject.  
1285 And I disagree with you stating that these properties, even with the adjustments, are comparable.

1286  
1287 Daniel: That's your opinion.

1288  
1289 Sean: Excuse me. The purpose of cross-examination is to ask questions and not to make  
1290 statements. You should be asking questions just as he asked you questions during your cross-  
1291 examination.

1292  
1293 Michael: OK. So you answered that question for me. Now, you had mentioned before  
1294 'economies of scale' and said that a ... Correct me if I'm wrong, you said that a larger square  
1295 foot building would generally warrant a higher price per square foot on a lease basis. Is that  
1296 correct?

1297  
1298 Daniel: No. I said just as a generalization larger stores rent for less per square foot than smaller  
1299 stores. That's a generalization. Generalizations are good for examples, but in a report you want  
1300 data to back up that generalization.

1301  
1302 Michael: Is there data here that maybe I missed to support that generalization?

1303  
1304 Daniel: I've got the square foot information for the Madison Metropolitan Area, from national  
1305 surveys on what the cap rates would be, what the lease rates would be. That's my data.

1306  
1307 Michael: Do you have any data from stores in the area or other stores in Wisconsin that show  
1308 the price per square foot for a building of this size?

1309  
1310 Daniel: I have my comparables that I have adjusted. If I had one that was 162,813 I'd definitely  
1311 use it.

1312

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1313 Michael: Are there other stores that are that size or comparable to that size that exist that you  
1314 were able to find?

1315

1316 Daniel: I don't know if you're referring to dark stores. Are you referring to stores that have  
1317 been vacant for five years?

1318

1319 Michael: I could ask you for both – any stores that are vacant, and then stores that are not  
1320 vacant.

1321

1322 Daniel: Stores that are vacant would not be used if they were 162,813 square feet because they  
1323 do not share the same highest and best use. That is a critical concept that has to be understood.

1324

1325 Michael: If a prudent investor would come in and say, "I want to put a Menards here," and the  
1326 best place to do it would be ... Let's say the best place to do it would be to put it in a store that's  
1327 comparable to the subject. Wouldn't they want to find a rate that would be based on that sale?  
1328 Let me rephrase that question. If the owner of a dark store wanted Menards to come in and rent  
1329 their property, wouldn't they want to give them the best rate possible to make sure that store  
1330 wasn't vacant anymore and they're actually producing an income? Because it's a property that is  
1331 vacant, generally aren't they considered to be not very good properties and you would want to  
1332 lease them up? Am I correct in assuming you would want to find the best rate possible for any  
1333 potential tenant?

1334

1335 Daniel: Stores that are vacant, you're correct, are inferior to stores that are operating. And they  
1336 don't share the same highest and best use. A Goodwill might go into that store. It might turn it  
1337 into a warehouse. It doesn't share the same highest and best use as a retail improvement center.  
1338 So vacant stores ... and there's case law that the Supreme Court has said they're not good  
1339 comparables.

1340

1341 Michael: If I was a tenant coming in to rent a property, wouldn't I want to find the lowest rate  
1342 possible within a given area because then I can make any improvements that I had to do for a  
1343 property that size? I imagine there might be minimal tenants that could invest or could rent a  
1344 potential store of comparable size. Is that correct?

1345

1346 Daniel: You're comparing apples and oranges. Like I said, a vacant store is not comparable to  
1347 an operating store. And as far as an investor goes, of course they want to pay the least amount.  
1348 They want to pay the least amount for a lease rate. They want to pay the least amount when they  
1349 buy a property. But likewise, a landlord wants to get the most amount per square foot and wants  
1350 to sell property for the most that they can. That's just the nature of the business market.

1351

1352 Michael: But wouldn't it be true to say that as a tenant you'd want to make sure that your cost,  
1353 especially over a long-term basis, you would want to make that as minimal as possible, so you

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1354 would want to find the lowest lease rate as possible. Wouldn't it be easiest to move into a store  
1355 that was not occupied by anyone?

1356

1357 Daniel: An investor would like to pay the least amount all the time. I would like to buy that  
1358 Menards for \$10. I would like to lease it for 10 cents a square foot. The odds of that happening  
1359 are you have a better chance of winning the lottery four times in a row. This is probably a  
1360 truism. Investors want to pay the least; owners want to get the most.

1361

1362 Michael: I don't have any more questions at the moment.

1363

1364 Mayor Chilsen: You don't have any more questions?

1365

1366 Michael: No, I do not.

1367

1368 Mayor Chilsen: OK. Does the board have questions?

1369

1370 Cari: I have a question on the assessed value you have here that you're requesting it be raised to  
1371 the \$16,900,000. Is that specific to the parcel that they are objecting to? Or is that the  
1372 combination of all those parcels ...?

1373

1374 Daniel: Those are all those parcels, and that would be left up to the assessor on how they  
1375 allocate that \$16,900,000. It really doesn't make a difference how we allocate it. But we would  
1376 want to make it reasonable.

1377

1378 Cari: I was just wondering if it would be a change in the improvement value, which I think only  
1379 one parcel has improvements on it and the other ones are land values. Or you're considering that  
1380 it would change values even on possibly land values. You don't have any kind of detail of what  
1381 would change.

1382

1383 Daniel: I don't have the detail on that. There are six parcels involved here. Typically when  
1384 there's one parcel involved, if there's an increase or decrease it's done to the improvement value  
1385 because it doesn't make a difference if the assessor valued the land for a dollar and the  
1386 improvement for \$16 million, a taxpayer can't object to one component of the assessment. And  
1387 it's not required that an assessor make it equal on each part of the assessment. Assessors do try  
1388 to get a reasonable land value and a reasonable improvement value. But it's only required to  
1389 separate those two because of the statutes. But the statute – Chapter 70; I don't know the exact  
1390 site – but the taxpayer cannot object to one section of the assessment and say, "My land value is  
1391 too high" or "My improvement value is too high." You have to take both of those two into  
1392 consideration, and that's if the combination is fair market value. That's all that matters. This has  
1393 been litigated. It was litigated in the Allright case, and the Appellate Court affirmed that you  
1394 can't object to one element of the assessment. It's the total value that makes a difference. But

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1395 I'm sure Heather and I will make some reasonable adjustments so that to allow the taxpayer if  
1396 they want to object to a single parcel.

1397

1398 Cari: Do you also know ... because right now I've just been focusing on the one that they have  
1399 objected to, and the value that we have on the assessment role for that one parcel is \$10,448,200.  
1400 Do you know what the combined value on the assessment role is right now for all those  
1401 properties? Or do you not have that total available?

1402

1403 Daniel: Yes, it's in my report. It's about \$12 million for all six parcels.

1404

1405 Cari: OK. I must have missed that in the report. Was it in the beginning where you listed all the  
1406 parcels? Maybe it's on the first page.

1407

1408 Daniel: Yes. Let me find the page number for you.

1409

1410 Cari: Here, I've got it. Page 5 is where you list the parcels. So is it that \$12,547,100?

1411

1412 Daniel: Yes, that's the assessment value of all the parcels.

1413

1414 Cari: On the book right now?

1415

1416 Daniel: Yes.

1417

1418 Cari: OK. Thank you.

1419

1420 Mayor Chilsen: Any other questions?

1421

1422 Ald. Binash: Mr. Byrnes had made indication of the generally accepted principles of assessing.  
1423 In page 37, 70.47, number 8, sub 'd,' it says on the bottom of that highlighted area "and other  
1424 data which may throw light upon the value of the property." Is there a conflict between the  
1425 statute and the generally accepted principles of assessing that may make a difference in the  
1426 income use method?

1427

1428 Daniel: No, and that was Mr. Byrnes' opinion that income on a single property or an owner-  
1429 occupied property is not relevant. Well, the four cases I stated and the Allright Parking case that  
1430 I was intimately involved in – I was the assessor and the appraiser and did the report – the court  
1431 had acknowledged that income to that property is inextricably intertwined with the value. And  
1432 as far as the statute goes, it's not ambiguous. I mean, it's clear that all data which may throw  
1433 light on the value of the subject. That's why we want the mortgage documents. That's why we  
1434 want the insurance documents. And the income is critical. I mean, that supports the sales  
1435 comparison approach. That's what an investor would look at, and that's what would determine

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1436 the sale price. If it's making a million dollars and the cap rate is 10 percent, they're going to pay  
1437 \$10 million. If it's making \$2 million they're going to pay \$20 million. So income to a property  
1438 is critical to its value, and that's what we like to look at. And that throws a lot of light on the  
1439 value of a property. Like I said, the statute is not ambiguous. It says all books, anything in other  
1440 data that the Board of Review requires – they have to come up with it. This concept that the  
1441 valuations methods say it's not relevant, it's not up to the taxpayer to tell you what's relevant to  
1442 the value. You requested it. You're entitled to it. After you get it you may determine it's not  
1443 relevant, but they certainly have to provide it first. This is a quasi judicial body, and it has to be  
1444 respected the same way that a Circuit Court or any other court that requires information to be  
1445 submitted. In here it says what they're subject to if they don't provide that information. This  
1446 isn't 'I just decided not to provide it because I think that it doesn't pertain to valuation.' You  
1447 wouldn't get away with that. You would be in jail. Mr. Muth knows as a police officer he'd be  
1448 in jail if he told the judge that 'I don't think you're entitled to this information.' I don't expect  
1449 Mr. Byrnes to go to jail, but I think it's a lack of respect. It's two things: it's a lack of respect  
1450 for this board, and it's a lack of knowledge that they're required to come into a state ... You  
1451 don't come from Chicago thinking 'I'm going to play by Chicago rules.' You come to this state.  
1452 You know the statutes. You know the Wisconsin Property Assessment Manual. You know the  
1453 case law. That's how you present your case – not without any professionals, and not determining  
1454 what the board is entitled to.

1455  
1456 Ald. Binash: There is a Home Depot located in this area as well, and other places like Lowe's. I  
1457 didn't see any of that in any of the assessments. Is that really relative to what we're doing here  
1458 today?

1459  
1460 Daniel: Oh, yes, it would be. But I didn't have any information on what the Lowe's lease is for.  
1461 If they sold recently, I couldn't find any information that they sold recently. If they had, I would  
1462 certainly have included it in my information. But I can tell you this: everything would have  
1463 coordinated with my report. I've had my own business for 30 years. I know how a businessman  
1464 thinks. You can't get a property like this at some type of discounted rate. Businessmen are not  
1465 stupid. They sell for the highest value. Investors that buy the property want it for the lowest  
1466 value. Somehow they come and meet, and that's what's called the market. Two people  
1467 negotiating come to a value – that's how you determine a market. That's how all my  
1468 comparables were determined. They're all operating stores. That's what I used and compared  
1469 them. If I had a bigger property I would have used it, but life is not perfect, unfortunately.

1470  
1471 Ald. Binash: Thank you, sir.

1472  
1473 Mayor Chilsen: Any other questions?

1474  
1475 Sean: With respect to this parcel, then would it be your opinion that this parcel's value is  
1476 \$14,802,000? Given that the only thing the Board of Review can do is address this parcel today,

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1477 and it can't do anything with respect to parcels that aren't at issue at the Board of Review. In  
1478 making its determination and the value of the other parcels as you have pointed out is  
1479 \$2,098,900, and the difference between \$16,900,000 and your number is the number that I was  
1480 stating.

1481  
1482 Cari: The value I had was \$12,547,100.

1483  
1484 Sean: Sorry, I was reading the wrong ...

1485  
1486 Cari: What was the difference that you had?

1487  
1488 Sean: \$2,098,900.

1489  
1490 Cari: Between the \$16,900,000 and that figure?

1491  
1492 Sean: No, between the current assessed value of this property, and I added \$2,098,900 to that.  
1493 That's how we get to that \$12,547,100 number, correct?

1494  
1495 Cari: That's what you're looking to get to with the ...

1496  
1497 Daniel: Yes. If we have a five-minute break I'll calculate ...

1498  
1499 Cari: I thought that figure, that \$12 million, was what the total was for all the combined parcels.

1500  
1501 Sean: I think it's that ... Right, yes it is. So what he is requesting, I think, is an increase of the  
1502 difference between \$16.9 and that \$12 million ...

1503  
1504 Cari: I'm getting \$4,352,900.

1505  
1506 Sean: Which comes to \$14,802,000.

1507  
1508 Mayor Chilsen: Why don't we take a five-minute recess, get the numbers together and then  
1509 bring those back to us.

1510  
1511 Daniel: What I'm understanding is you want a number for the main parcel.

1512  
1513 Sean: Correct.

1514  
1515 Daniel: OK. I'll take five minutes and I'll give you that number.

1516  
1517 Mayor Chilsen: We stand recessed for five minutes.

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1518

1519 Mayor Chilsen: OK, let's go back into session, please.

1520

1521 Daniel: On the main parcel, we're going to assess it at \$1,800,000 for land, and \$13,001,100 for  
1522 the improvements. Now, the balance of \$2,098,900, we're going to spread among the vacant  
1523 parcels. We're going to add it to the land value.

1524

1525 Cari: Will you give me that breakdown in writing?

1526

1527 Daniel: Yes, I will. I'll do that in consultation with Heather.

1528

1529 Cari: OK.

1530

1531 Mayor Chilsen: I just want counsel to go on record saying that that's appropriate.

1532

1533 Sean: Correct. During the ... When we're making a finding of fact determination decision we'll  
1534 use the form that the Clerk has provided, and we will note the requested land value of \$1,800,000  
1535 from the assessor and the requested amount of \$13,001,100 on the improvements. So when we  
1536 go through making findings of fact determination decision that's where we'll note that.

1537

1538 Daniel: Mr. Chairman, I would just like to point out that it's the total that is really what we're  
1539 saying the fair market value is. The breakout, we're trying to get it close, but that doesn't really  
1540 mean as much as the total.

1541

1542 Mayor Chilsen: OK. I just want the record to reflect everything so that there are no questions  
1543 and there is a good paper trail.

1544

1545 Daniel: Thank you.

1546

1547 Mayor Chilsen: Any other questions?

1548

1549 Michael: May I ask one more question? I just had one final question for you. Normally when  
1550 you appraise property and whatever jurisdictions that you operate in, do you normally request the  
1551 income of the individual businesses to make a ...

1552

1553 Daniel: Always. Always.

1554

1555 Michael: OK. And do your colleagues agree with you? And do the rest of the appraisers and  
1556 the assessors that you work with also do the same?

1557

1558 Daniel: I don't know what everybody else thinks, but when I was senior property appraiser in

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1559 Milwaukee, everybody agreed. And I set the templates for everybody.

1560

1561 Michael: OK. So the experience that I have in working in Milwaukee or in other districts in  
1562 Wisconsin, I've never once been asked for the internal finances of a business. And would you  
1563 say outside of the court cases that you've cited here today that the majority of assessors and  
1564 appraisers do not look and do not review, or attempt to ask for, the actual financials and  
1565 operating statements of an owner-occupied property?

1566

1567 Daniel: What other assessors do, I don't know what everybody does. But they should ask for  
1568 the income and the expense information like we have in our subpoena. That's why I teach  
1569 classes. That's why I teach the assessors what information they should ask for.

1570

1571 Michael: Then why is it that the appraisers I've spoken with across Wisconsin and Illinois and  
1572 other various states seem to agree with me that the operating statements of a business don't  
1573 indicate the value of the fee-simple property of sticks and bricks?

1574

1575 Daniel: Quite frankly, it's immaterial what other people think because we have to follow  
1576 Wisconsin law. And we assess according to the Wisconsin Property Assessment Manual. We  
1577 follow the statutes. We follow case law. We study it. That's what's required of us so we know  
1578 what we have to ask for.

1579

1580 Michael: I only ask because it seems odd to me that almost everyone else operates in that  
1581 fashion, but you seem to operate in this fashion.

1582

1583 Sean: There's no question in that.

1584

1585 Mayor Chilsen: No. We have to stick to questions, please.

1586

1587 Sean: Do you have any further questions?

1588

1589 Michael: No, I do not.

1590

1591 Mayor Chilsen: Anybody else have any further questions? OK, then our next step is to  
1592 deliberate.

1593

1594 Cari: We should close the testimony portion.

1595

1596 Mayor Chilsen: We close the testimony portion and we go into open deliberation right here,  
1597 correct?

1598

1599 Sean: Correct.

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1600  
1601 Mayor Chilsen: OK. Ladies and gentlemen, your thoughts.

1602  
1603 Sean: Your Honor, may I suggest that before opening it to general discussion you run through  
1604 the pages 74 and 75 and have a consensus with respect to what happened at the hearing to form  
1605 the basis for the more general discussion and deliberation. It says 74 and 75 at the top.

1606  
1607 Cari: If you want me to summarize it I can read through, if you would like.

1608  
1609 Mayor Chilsen: Absolutely. Thank you.

1610  
1611 Cari: For testimony, the following individuals were sworn as witnesses by the Board of Review  
1612 Clerk, which is myself. We swore in Michael Byrnes of Paradigm Tax Group and Dan Burdek  
1613 from Real Estate Appraisals, Inc. Sworn testimony by the property owner, the objector was their  
1614 representative, Michael Byrnes. It asks if there was a recent sale of the property subject matter  
1615 presented, and I do not believe that there was. Other factors or reasons, if presented ... I don't  
1616 think there was any testimony presented. If you disagree with any of this when I'm going  
1617 through this, please tell me, OK? Sworn testimony on behalf of the property owner/objector,  
1618 there were no other witnesses, so I listed none. The summary of the testimony, I listed none.  
1619 Sworn testimony by the assessor ... No. 3 was Dan Furdek. A recent sale of the property subject  
1620 – yes. If yes, the subject property was sold for, and I just noted to see Exhibit 3, which is the  
1621 report Dan provided for us.

1622  
1623 Sean: Cari, I think a recent sale of the subject property is 'no,' and that Exhibit 3 will be looked  
1624 at down below.

1625  
1626 Cari: In the other factors?

1627  
1628 Sean: Yes, or recent sale of comparable properties.

1629  
1630 Cari: Can we say 'See Exhibit 3,' or do we want specifically to list it?

1631  
1632 Sean: That's fine. You can say 'See Exhibit 3.'

1633  
1634 Cari: So in the recent sales of comparable properties we'll say 'See Exhibit 3,' which is the  
1635 report from Dan. Other factors or reasons, if presented, I do not have anything listed there  
1636 because we pretty much strictly stuck to the report. Should I list the report again there?

1637  
1638 Sean: Yes, because the report also went through the cost and the income approaches as well as  
1639 the sales approaches.

1640

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1641 Cari: I'm going to put 'yes' and 'See Exhibit 3' again. Sworn testimony on behalf of the  
1642 assessor was presented by Dan Furdek, Real Estate Appraisals. Summary of testimony of other  
1643 witnesses for the assessor, there were none because Dan was the only person that did give  
1644 testimony. Then we move into page 76, which is the determination.

1645

1646 Sean: I think you can go through C-1, and then C-2 maybe becomes where there is discussion.  
1647 C-1 is the Board of Review finds ...

1648

1649 Mayor Chilsen: Finds that the sale supports the assessment.

1650

1651 Sean: No. The Board of Review finds that there was a recent sale of the subject property, and  
1652 the answer to that one is 'no.'

1653

1654 Cari: It's no because we didn't have a recent sale. We were using comparables. One is 'no' and  
1655 now we would skip automatically to No. 2.

1656

1657 Mayor Chilsen: The Board of Review finds that there are recent sales of comparable properties.  
1658 And our answer to that ...

1659

1660 Cari: I think it's 'yes,' if we agree.

1661

1662 Mayor Chilsen: Do we agree on that?

1663

1664 Cari: Any objections to that?

1665

1666 Mayor Chilsen: Any objections? OK. Property owner presented testimony of recent sales of  
1667 comparable properties in the neighborhood. That would be 'no.' Any objections to that? OK.  
1668 Assessor presented testimony of recent sales of comparable properties in the neighborhood. That  
1669 would be 'no' also. Correct? OK. List the properties and values that the Board of Review relies  
1670 on to make its determination as to fair market value. Should we use Exhibit 3 there?

1671

1672 Sean: You are able to rely upon what was put into evidence, which includes Exhibit 3, yes.

1673

1674 Mayor Chilsen: OK – evidence including Exhibit 3.

1675

1676 Cari: When we have sales of comparable properties, I know it says 'neighborhood,' but my  
1677 interpretation of that would be that the assessor did provide comparable sales. When you say  
1678 'neighborhood,' I'm thinking ...

1679

1680 Sean: For commercial properties it's the market area and not neighborhood, which is designed  
1681 more for residential property.

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- 1682  
1683 Cari: I think I would change that to ‘yes,’ but maybe change the word ‘neighborhood’ to ‘the  
1684 market area.’  
1685  
1686 Sean: Correct.  
1687  
1688 Cari: Because I do think that he did ...  
1689  
1690 Mayor Chilsen: So on 2-B we want to change that to ‘yes’ and change ‘neighborhood’ and  
1691 maybe parenthetically state ‘market area.’ Anybody have an objection with that? OK. Item No.  
1692 3 – the Board of Review finds that the assessment should be based on other factors.  
1693  
1694 Ald. Muth: I think yes because we have additional information now. The assessor has gone into  
1695 great detail to reevaluate everything in the area, and we found out that, in his opinion, there was  
1696 an increase.  
1697  
1698 Mayor Chilsen: I’m agreeable to that. If ‘yes,’ list the factors that the Board of Review relies on  
1699 to make its determination as to fair market value. Do we want to cite Exhibit 3 and ...  
1700  
1701 Cari: We could maybe say ‘additional information provided in Exhibit 3 to justify an increase in  
1702 value.’  
1703  
1704 Sean: Would you consider one of the additional factors that you’re considering are that both the  
1705 cost and the income approach justify and support the sales comparable approach? And would  
1706 you adopt that as one of your findings in this section?  
1707  
1708 Mayor Chilsen: So what is the amount we’re adjusting it to?  
1709  
1710 Cari: We haven’t made a motion to that amount. But the amount that we are looking to increase  
1711 it is \$4,352,900. Then the assessors had we’re going to be splitting that amount over those  
1712 parcels and giving us the detail on that. Do we need the detail before we make the motion?  
1713  
1714 Sean: My understanding is that the increase of \$4,352,900 is only being applied to the subject  
1715 parcel, which is ...  
1716  
1717 Cari: The one here. So there will be no adjustment to the other parcels.  
1718  
1719 Daniel: There will be a \$2 million adjustment. We’ll spread it out over those other five parcels,  
1720 which is all just land.  
1721  
1722 Mayor Chilsen: But we can’t do that, can we?

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1723

1724 Cari: We can't do that, can we?

1725

1726 Mayor Chilsen: We can't spread anything out over other parcels.

1727

1728 Sean: There won't be an adjustment of those other parcels. There will be an increase of ... If  
1729 the possible motion is the motion to increase the 18-4523-13 by \$4,352,900.

1730

1731 Daniel: If I can interject, Mr. Chairman. I do think that the board has the authority to make  
1732 corrections to parcels that are not objected to, but it's up to the board whether they want to do it.  
1733 If they don't want to do it, that's entirely in your purview. But I do believe that corrections can  
1734 be made without objections.

1735

1736 Sean: From my opinion, it would be incorrect procedurally to move ahead that way.  
1737 Additionally, mathematically it would be incorrect to move that way because my understanding  
1738 from the testimony is that the total value is \$16,900,000 of all of the parcels. Currently the  
1739 assessed value on the other parcels is \$2,098,000. If the board elects to increase the value of the  
1740 parcels by ... The parcels all together have a current value of \$12,547,100. If the board made a  
1741 motion to increase the current parcel by \$4,352,900 plus another \$2 million, that would give a  
1742 value of greater than \$18 million. The current valuation is over \$12 million.

1743

1744 Daniel: I'm asking for a \$16,900,000 total.

1745

1746 Sean: Correct. So I would recommend that any motions be limited to the single parcel, and that  
1747 the maximum amount of increase not be greater than \$4,352,900.

1748

1749 Daniel: I have no objection to that. You are correct.

1750

1751 Cari: Your Honor, maybe some of the confusion, for clarification, I think when we meet for the  
1752 first time for Board of Review we have that item of error correction. I do think we have the  
1753 power to correct things, but I think it would be at that first Board of Review that we have in June.  
1754 Now that we've proceeded past that and we're into the hearing process now, that's kind of  
1755 closed. You're right that we do have that authority, but I think it's at a certain point in time.

1756

1757 Daniel: The City Attorney has clarified it for me, and now that I think about it he's correct.

1758

1759 Cari: I just wanted to clarify it for everybody else here so that they would understand that we do  
1760 have that authority at that point. So he is correct in saying that.

1761

1762 Daniel: Yes, I agree with the City Attorney.

1763

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1764 Mayor Chilsen: We are down to the motion.

1765

1766 Motion by Ald. Muth, second by Ald. Olson, to increase the assessed value of Parcel No. 18-  
1767 4523-13 by \$4,352,900.

1768

1769 Cari: Do we need to note how that is going to be split between the land and the improvement  
1770 value?

1771

1772 Sean: No.

1773

1774 Cari: OK. We will leave that to the assessor to give me those figures.

1775

1776 Sean: Correct.

1777

1778 Cari: Thank you.

1779

1780 Mayor Chilsen: Any other questions or discussion? Hearing none ...

1781

1782 On roll call vote: Ald. Bob Muth – aye, Ald. Jim Binash – aye, Mayor Joe Chilsen – aye, Ald.  
1783 Jim Olson – aye, City Clerk Cari Burmaster – aye. Motion carried unanimously, 5-0.

1784

1785 Sean: Mr. Chair, I would suggest that you entertain another motion that adopts the findings of  
1786 facts and the determinations on page 74, 75 and 76 as kept by the Clerk, and which in discussion  
1787 were not objected to, and that there be a formal motion making those the finding of facts and  
1788 conclusions of this Board of Review.

1789

1790 Motion by Mayor Chilsen, second by Ald. Muth, to approve the findings of facts based on pages  
1791 74 through 76.

1792

1793 On roll call vote: Ald. Bob Muth – aye, Ald. Jim Binash – aye, Mayor Joe Chilsen – aye, Ald.  
1794 Jim Olson – aye, City Clerk Cari Burmaster – aye. Motion carried unanimously, 5-0.

1795

1796 **Adjournment**

1797

1798 Motion by Cari, second by Ald. Olson, to adjourn sine die at 10:41 a.m.

1799

1800 On voice vote, motion carried.

1801

1802

1803 Recorded by:

1804

1805 Kirk Bey

Reviewed 7/28/15 by Cari Burmaster