COURT OF APPEALS OF WISCONSIN
DISTRICT II

REGENCY WEST APARTMENTS LLC,

Plaintiff-Appellant,

vs. Appeal No. 2014-AP-2947

CITY OF RACINE,

Defendant-Respondent

APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT OF RACINE COUNTY
CASE NOS. 2013-CV-1546 and 2013-CV-1848
THE HONORABLE GERALD P. PTACEK, PRESIDING

BRIEF OF RESPONDENT

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RESTATED STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Was the City of Racine's assessment of the Regency West Apartments LLC (hereinafter cited as "Regency West") sustained by comparable sales?

Answered "yes" by the Trial Court.

The Court held, "That four very experienced assessors concluded that the comparable sales approach could be applied here and that comparable properties existed for the sake of comparison is very compelling testimony" (record 31, page 8, hereinafter cited: "R31, p8," citation to the Record in Case No. 13-CV-1546, unless otherwise noted). The Court continued that the properties relied upon by the City of Racine assessors were sufficiently "similar" to Regency West for a valid comparison.

2. Did the City of Racine assessors and supporting experts appropriately complete an income analysis for valuing the property as a check on the comparable sales approach?

Answered "yes" by the Trial Court.

The Trial Court noted that the opinions of the experts were all highly subjective and resulted in valuations using the income approach that resulted in considerable variations in value (R31, pp9-10). The Court recognized that all witnesses stabilized values for purposes of the income valuation and made adjustments based on their experience and reasoning, the Court finding, "based upon the years of experience, knowledge, and demeanor" of the witnesses, the City of Racine's witnesses were more credible than Regency West's sole appraiser witness, Scott McLaughlin (R31, p10).

3. Did Regency West's witness fail to follow the dictates of Mineral Point Valley Ltd. Partnership v. Mineral Point Board of Review, 2004 WI App. 158, 275 Wis.

2d 784, 686 N.W. 2d 697, which held that market rates must be used in calculating an appropriate capitalization rate for subsidized housing?

Answered "yes" by the Trial Court.

Mineral Point held that market rates must be used in determining the capitalization rate in the income approach to valuation, following Bloomer Housing Ltd. Partnership v. City of Bloomer, 2002 WI App. 252, ¶ 20, 257 Wis. 2d 883, 653 N.W. 2d 309. Regency West's expert Scott McLaughlin failed to do so in his income valuation.

4. Did the Plaintiff's expert witness violate the rule in Bischoff v. City of Appleton, 81 Wis. 2d 612, 260 N.W. 2d 773 (1978), by basing his valuation solely on the income approach?

Answered "yes" by the trial court.

Regency West's witness Scott McLaughlin presented a four page report (R42, Exhibit 40), which relied solely on the income approach. The Trial Court properly concluded that that manner of valuation for purposes of assessment review violated the mandate of Bischoff, 81 Wis. 2d at 619 (R31, p10), which requires reliance on more than just the income approach to valuation.

5. Did Regency West fail to overcome the presumption of correctness for assessors?

Answered "yes" by the Trial Court.

The Court found the City of Racine's assessors and its experts more credible than Plaintiff's one expert. This is more than sufficient to defeat the claim that Regency West had overcome the presumption of correctness of the City of Racine assessor. Beyond the question of credibility, the Court further found material errors in the approach of Regency

West's assessor Scott McLaughlin, in particular his failure to follow the three tier approach mandated by State ex rel. Markarian v. City of Cudahy, 45 Wis. 2d 683, 173 N.W. 2d 627 (1970) (R31, p11).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The City of Racine does not believe that oral argument is necessary and does not believe that the opinion should be published. Numerous assessment appeals have been heard by the Appellate Courts in Wisconsin, with many of those appeals resulting in published decisions. Long-standing law, which has frequently been affirmed, as set forth in Markarian, id., and Bischoff, 81 Wis. 2d 612, dictate the result in this appeal. Although the record is large, the overwhelming weight of the evidence of the City of Racine, the testimony of the City of Racine assessor at the time, Raymond Andersen, the City of Racine assessor performing the fundamental work underlying the City's valuation, Janet Scites, Daniel Furdek, a certified appraiser and long time experienced municipal assessor, and Peter Weissenfluh, the former City Assessor for the City of Milwaukee, defeat the claim that the City's assessment is "excessive." The appellate analysis of assessment practices will not be clarified or enhanced by the decision in this appeal.

STATEMENT OF THE CASE

A. Nature of the Case and Procedural Status

Regency West commenced the action by a Summons and Complaint asserting the right to a refund pursuant to Wis. Stats. § 74.37 for 2012 taxes, which were based on the January 1, 2012 assessment valuation of $4,425,000 (R1 and R2). The Plaintiff also asserted a claim of unlawful taxes pursuant to Wis. Stats. § 74.35, which claim has been abandoned. An assessment appeal pursuant to Wis. Stats. § 74.37 is de novo. The Trial Court therefore is not merely reviewing what may have been presented to the Board of Review, a certiorari review, but makes its own determination. Bloomer, 2002 WI App. 252, ¶ 11. The question before the court is whether the assessment is "excessive," not if the assessment number is exactly correct.

Because Wis. Stats. § 74.37 requires a contest before the Board of Review as a prerequisite to bringing a § 74.37 action, the City of Racine brought a Motion to Dismiss for failure of Regency West to have contested the 2012 assessment and taxes before the Board of Review. The Court denied the Motion based on its finding that Regency West did not receive the City of Racine's mailed notice of a revised assessment.

Regency West brought an additional action pursuant to § 74.37, seeking to overturn the 2013 assessment of $4,169,000 (R1 and 2 for Case No. 13-CV-1848). The two assessment appeals were consolidated by a Stipulation and Order consolidating the actions for purposes of trial (R17, p2).

Trial to the court was held over a period of four days on May 20, 2014 through May 22, 1014 and July 11, 2014 (transcripts of proceedings are record 37, 38, 39, 40, and 45).

After post-trial briefing, the Court rendered its decision on November 20, 2014 (A-App. 1-12, R31). The Court incorporated the findings of fact and conclusions of law set forth in its decision in its Order for Judgment dated November 20, 2014 (R32).

Regency West appealed from the decision of the Court and subsequent judgment in both case no. 13-CV-1546 and no. 13-CV-1848.

B. Supplemental Statement of Facts

City Assessor Janet Scites performed the valuation of the Regency West property in 2012 and 2013 (R37, p134). Janet Scites had overall responsibility for placing assessment values on approximately 7,500 properties (R38, p231). Because of the sheer number of properties the City of Racine uses mass appraisal techniques (R38, p238-Scites; R39, pp64-65-Anderson). Pete Weissenfluh, the Chief City Assessor for the City of Milwaukee for over 25 years, confirmed that mass appraisal techniques are necessarily used in communities with large numbers of properties (R45, p129). Mass appraisal is a method of applying values to several hundred properties or several thousand to try to make every property as equitable as possible within each grouping (R38, p238-Scites; R39, pp64-65-Anderson).

Using mass appraisal techniques and the best information available to her, Janet Scites valued the Regency West property at $4,425,000 as of January 1, 2012 (R38, p239; R42, Exhibit 11). She estimated expenses for the property based upon her experience and used a capitalization rate of 8.5%, which reflected market rates (R38, pp237-238).

When an objection is filed, the objection is heard before the Board of Review. Regency West did not appear before the Board of Review with respect to the 2012 valuation. The Trial Court held that although the City of Racine had mailed the notice of

assessment, there was no evidence that Regency West had actually received the notice of the revised 2012 assessment so that appearance before the Board of Review, otherwise a pre-requisite to bringing an action pursuant to Wis. Stats. § 74.37. A Board of Review hearing was not necessary for Regency West's 2012 appeal. Because of the lack of a Board of Review hearing on an objection for the 2012 valuation, the City of Racine Assessors Office did not develop any other method of valuation beyond mass appraisal.

For the mass appraisal valuation used by Janet Scites and the Racine City Assessors Office for 2012, Janet Scites used an income approach (R42, Exhibit 11). She stabilized expenses to bring the estimated and calculated expenses for Regency West into line with the Assessors Office experience with other § 42 properties in the City of Racine (R38, pp236-237 and R39, pp5-6). She did the same with respect to the vacancy rate, using a rate consistent with the actual reported rate of three vacancies out of 72 units for Regency West (R38, pp235-236). She used a cap rate based upon the market rate derived from information available to the City Assessors Office (R38, p237). Wisconsin law supports the stabilizing of income and expenses when an income approach is employed for valuation. ABKA Limited Partnership v. Board of Review of the Village of Fontana-on-Geneva-Lake, 224 Wis. 2d 551, 563-4, 591 N.W. 2d 879 (1999). Regency West's expert Scott McLaughlin conceded that stabilization was appropriate when using the income approach (R38, p182).

For the January 2, 2013 valuation report, Janet Scites determined that there were three comparable properties to be used for the sale comparison approach to valuation. She placed a value of $4,169,000 on the property as of January 2013 (R43, Exhibit 12). During trial she explained her choice of comparables, the adjustments she made to the

comparables, and relevant Racine market information, further confirming that all comparables were arms-length (R38, pp243-251; R39, pp3-5). For verification purposes, she also performed a valuation based on the income approach. She considered the cost approach but did not use it (R38, p251).

Janet Scites' valuation was reviewed and approved by the City of Racine Chief Assessor, Raymond Anderson (R39, pp66-69). (See Assessor Raymond Anderson's signed the Assessor's Affidavit for both years (R43, Exhibits 114 and 115)). Mr. Anderson is a state certified general appraiser, which qualifies him to appraise subsidized housing (R39, p62).

Witnesses Daniel Furdek and Peter Weissenfluh supported the valuations of the City of Racine for the Regency West property. Mr. Furdek is an expert appraiser whose extensive background in appraisals and municipal assessment is detailed in his resume (R43, Exhibit 117). Peter Weissenfluh was the City Assessor for the City of Milwaukee for more than 25 years with extensive experience with municipal appraisals and reviews (R43, Exhibit 135). Both oversaw federally subsidized housing in their work as City Assessors (R40, pp9-11-Furdek; R45, p129-Weissenfluh).

Mr. Furdek and Mr. Weissenfluh prepared an appraisal report for Regency West properties for the years 2012 and 2013 (R43, Exhibit 119). That report corroborated that the assessment valuations of the City of Racine Regency West property for both 2012 and 2013 was not "excessive." Mr. Furdek and Mr. Weissenfluh used four different methods of valuing the property, first relying upon the second tier method of valuation, sales comparison, as mandated by the Markarian hierarchy (pp 40-47 of the report) (R43,

Exhibit 119). As a third tier income approach, they valued the property by analyzing both direct capitalization and discounted cash flow (pp 48-61 of the report).

Finally, they also used a cost approach, which while difficult to apply because of numerous variables, had more validity than the typical case because of the newly constructed nature of the property and availability of actual construction cost data (R40, pp90-96; R38, p227). Mr. Furdek and Mr. Weissenfluh did not consider the tax credits applicable to the Section 42 property (following Wis. Stats. § 70.32(1)(g)). In their cost approach, they deducted the value of the tax credits in determining the value of the property using that third tier approach (R40, pp93-96; R43, Exhibit 119, pp62-63).

Regency West's expert witness Scott McLaughlin used the income approach in valuing the property in his four page report (R43, Exhibit 40). He employed no other method of valuation for the property for either year. He testified that he did not use the sales comparison approach for the Regency West property because of the lack of sales of comparable properties (R38, p102). Notwithstanding that opinion, he testified to substantial information for 15 tax credit improved properties sold from August 2010 to March 2013 in his Exhibit 46 (R43; R38, p116-117). He also used § 42 information for his capitalization rate opinion (R38, pp133-4 and 170-1; R43, Exhibit 46). Obviously, he had substantial information available to him with respect to the sales of these properties which would have presumably permitted a comparable sales approach, with appropriate adjustments.

Although Mr. McLaughlin conceded that stabilization of income and expenses is appropriate when engaged in property valuation using the income approach (R38, p185), he did not do so in his four page report. Unlike Janet Scites, Mr. McLaughlin had total

access to the financial records of Regency West and in fact had actual income and expenses for 2012. Yet he did not use actual income and expenses for 2012, claiming that such information would not have been available to a potential buyer as of January 1, 2012 so that it was not relevant (R38, pp182-183). Then without stabilizing 2012 income and expenses, he used that data for his income approach for 2013 notwithstanding the fact that he had actual and budgeted income and expenses for 2013 when he made his valuation, once again relying on his position that a potential buyer would not have that information available so that it was not relevant to the valuation as of January 1, 2013. Both Mr. Furdek and Mr. Lerner testified that while potential buyers would look at budget and actual expenses, they would evaluate income potential on what they believe they can do (R40, pp22-23; R38, pp22-23).

In Mr. McLaughlin's income approach to valuation, he used expense figures for Regency West that were extraordinarily inconsistent. He used a payroll expense for 2012 of $46,510, while for 2013 it was $87,220, with no explanation for the nearly double expense cost increase. He used advertising expenses of $4,200 for 2012 and $27,460 for 2013, even though information in his file indicated that advertising expenses for 2013 were less than $2,300, as shown in his document (R43, Exhibit 100; R38, p182; information confirmed as correct by Mr. Lerner, R38, pp31-2). His maintenance costs went from $89,090 in 2012 to $53,160 in 2013. All of the foregoing data contained in his report (R43, Exhibit 40).

The capitalization rate that he used in his income approach was based on the cap rates for other Section 42 properties (R43, Exhibit 46). Although he had used the cap rate of 10.5% for both tax years, he had recently used a cap rate of 9.2 and 9.9 for Racine

subsidized housing (Anderson testimony, R40, pp3-4). He conceded that he did not know Racine market cap rates (R38, p181).

Section 42 properties have limitations that affect salability, as is true for all government subsidized property. The Wisconsin Property Assessment Manual treats all government subsidized properties in the same section (R43, Exhibit 34, pp9-38-46). Mr. McLaughlin admitted that Section 42 properties represent an emerging market (R38, pp81-83, 193-McLaughlin). This is due in part to the time that has passed since initiation of the program and to the potential renewability of Section 42 properties for rehabilitation purposes (R38, p26 – Lerner testimony, or renewability). Daniel Furdek noted the grant of Section 42 rehabilitation credits for his Bradley Place comparable (R45, pp113-114).

Regency West's factual statement gives short shrift to the opinions of Mr. Furdek and Mr. Weissenfluh. Regency West declines to detail the purported "numerous specific flaws" in their appraisal, contending that the Court did not rely upon it. Regency West simply references its Post-Trial Brief for its criticism (R27). The City of Racine is therefore somewhat handicapped in responding to Regency West's position regarding Mr. Furdek and Mr. Weissenfluh. The City of Racine did respond to the criticisms of Regency West against the testimony and opinions of Mr. Furdek and Mr. Weissenfluh in the City's Post-Trial Reply Brief (R28, pp8-11). The "report card" (R43, Exhibit 47) introduced through Scott McLaughlin for Mr. Weissenfluh's and Mr. Furdek's 70 page report and testimony is at the very least somewhat condescending. After four days of testimony and well over 100 exhibits, more significant is the Court's finding that Mr.

McLaughlin's four page report and opinion was not as credible as that of the four expert appraisers and assessors supporting the City's assessment.

ARGUMENT

I. The Trial Court Correctly Approved the City of Racine's Assessment Methodology.

State ex rel. Markarian v. City of Cudahy, 45 Wis. 2d 683, 173 N.W. 2d 627 (1970), held that a three tier assessment methodology was to be used to determine the value of real property in the State of Wisconsin. That hierarchy was later codified in the assessment statute. Wis. Stats. § 70.32. The first tier in the hierarchy is an arm's-length sale of the subject property, which is the best evidence of value. There was no such sale for Regency West. One then proceeds to the second tier, consideration of sales of reasonably comparable properties. Only if there are no reasonably comparable sales, does one proceed to the third tier of the assessment methodology, which includes consideration of income, cost, or other evidence of value. If there are sales of comparable properties, the third tier valuation approaches serve as a check on the assessment to avoid an odd result. The Court found that the comparable sales approach was appropriate and should be applied given the opinions and conclusions of four experienced assessors who had testified at trial (A-App. 8; R31, p8). See also Adams Outdoor Adv. Ltd. v. City of Madison, 2006 WI 104, ¶¶34 and 35, 394 Wis. 2d 441, 717 NW 2d 803, discussing the three tier methodology.

The Wisconsin Property Assessment Manual treats all federally subsidized housing, including Section 8, Section 42 and eight other sections of federally subsidized housing listed at 9-38 of the Manual, in the same section of the Manual (R42, 9-38-9-46).

There is no case law or anything in the Manual to invalidate use of the three tier hierarchy in assessing Section 42 or Section 8 properties. The Manual emphasizes that all three approaches to value should be used and specifically references Wis. Stats. § 70.32, which incorporates the Markarian hierarchy (R42, Exhibit 34, 9-44).

Because the 2012 assessment was not challenged at the Board of Review, the City of Racine Assessors Office based the valuation of Regency West only on mass appraisal techniques utilizing the income approach to value (R42, Exhibit 11). For commercial properties assessors may use mass appraisal. Peter Weissenfluh, the City Assessor for Milwaukee for more than 25 years, confirmed that in communities involving large numbers of properties mass appraisal techniques are used, which necessarily relies heavily on the income approach (R45, p129). If there is a challenge, the assessor for the community involved will then proceed to other techniques of valuation, including a sales comparison approach (R45, pp115-116 – Furdek).

In 2013, a challenge was made before the Board of Review and Janet Scites prepared a sales comparison analysis and also looked at a cost approach in addition to the income approach to valuation (R42, Exhibit 12). Ms. Scites made adjustments to the comparables as required in the sales comparison approach as shown on page 13 of Exhibit 12 (R42; R37, pp135, 140, and 143-4; R43, Exhibit 61; also defended at R45, pp272-276; R39, p8). Although she performed a cost analysis, she did not rely upon it (R39, p4). For the income approach, she stabilized income and expenses based on her knowledge of the Racine Market (R45, pp275-276). City Assessor Raymond Anderson reviewed the valuations for both 2012 and 2013, affirming the value in his Assessor's

Affidavits (R43, Exhibits 114 and 115). He confirmed that in his opinion the assessments were not "excessive" (R40, pp6-7).

This is a de novo refund action, not a certiorari review. Consequently, the Trial Court was not restricted to the record at Board of Review (In fact there was no Board of Review record for 2012). Metropolitan Associates v. City of Milwaukee, 2011 WI 20, ¶ 45, 332 Wis. 2d 85, 796 NW 2d 17. Therefore, additional and subsequent evidence to Board of Review evidence presented at trial is material in determining whether the City of Racine's assessments for Regency West for 2012 and 2013 were "excessive."

The City of Racine presented the testimony and evidence of the City of Racine Assessor Raymond Anderson and the assessor actually performing the ground work for the valuation for Regency West, Janet Scites, which was buttressed by the testimony of two eminently qualified assessors, Daniel Furdek and Peter Weissenfluh. Both Mr. Furdek and Mr. Weissenfluh confirmed the validity of the methodology used by the City of Racine Assessors Office and also the reasonableness of the market valuation placed upon the Regency West property (see credentials for Daniel Furdek, R43, Exhibit 117, and for Peter Weissenfluh R43, Exhibit 135 and R45, pp121-124). In their report marked as Exhibit 119, Mr. Furdek and Mr. Weissenfluh in great detail arrived at an appraised value for Regency West as of both January 1, 2012 and January 1, 2013, which in each instance was somewhat higher than the City's assessment for both years. They primarily relied upon a comparable sales approach with three comparable properties of subsidized housing. As required when performing a comparable sales analysis, they made adjustments in their grid appearing at pages 41 and 42 of their report.

Mr. Furdek in particular was cross-examined at considerable length concerning the comparables employed by Real Estate Appraisals, Inc., his company and that of Peter Weissenfluh. In their adjustment grids, Mr. Furdek and Mr. Weissenfluh removed the non-Section 42 portions of the properties used as comparables from their valuation and adjusted values accordingly. In an eminent domain case, Leathem Smith Lodge, Inc. v. State of Wisconsin, 94 Wis. 2d 406, 415, 288 NW 2d 808 (1980), the Court approved a sales comparison of components that were comparable to the components of the entity valued. This is exactly what Real Estate Appraisals did. All three of their properties contained federally subsidized apartment units and were adjusted for differences in location, age, and use with Regency West. (Discussed at great length by Mr. Furdek, R40, pp40-60).

Powerful evidence of the skill displayed by Real Estate Appraisals, Inc. in making adjustments to the comparable properties was demonstrated in the instance of the comparable three, known as City Square. The City Square property was involved in two back-to-back sales, detailed at R43, Exhibits 125 and 126. Exhibit 126 shows a sale price of $7,411,000, that sale including all the rental units for the property without the commercial portion that had been extracted from the Real Estate Appraisals, Inc. report at page 41. The two transactions shown on Exhibit 127 demonstrate that the initial calculation of Real Estate Appraisals for the non-Section 42 portion of the property was verified by the second sale where all the units were the non-commercial apartments. The non-Section 42 portion of the property used in the Real Estate Appraisals' adjustments was nearly identical to that actually shown in the subsequent sale (described by Mr.

Furdek, R40, pp62-66). As Mr. Furdek said, "this is like hitting a bull's eye at a hundred yards" (R40, p66).

Mr. Weissenfluh and Mr. Furdek, as well as the City Assessors, rendered the opinion that properties Section 42 units and Section 8 units were sufficiently similar for comparable sales valuation purposes. This opinion was based upon the market reality that rents for the properties were essentially the same (R45, pp164-5; R45, pp114-5 and 280; see also R40 on overall market sale prices). Janet Scites confirmed that for the Racine market (R39, pp4-5). Mr. Lerner conceded that the Regency West rents for Section 42 and Section 8 units were the same (R38, pp7-8).

With respect to Regency West's claims of greater risk for the Section 42 properties compared to Section 8 properties, Mr. Furdek presented irrefuted testimony that his Bradley comparable had a three year waiting list so that vacancy is not a large risk factor (R40, p98). Mr. Scites testified that section 42 properties generally have a waiting list (R38, p236). Mr. Lerner, the representative of Regency West, had to concede that only two or three of the 72 units in Regency West were vacant as of February 2012, a vacancy rate of approximately 4% (R3, p5). He admitted the lease up risk was gone by 2013 (R38, p7).

As a de novo appeal, evidence of comparable sales is material to a determination of whether the assessment in 2012 or well as the assessment in 2013 was "excessive." The Trial Court in a de novo review can consider evidence developed after the assessment valuation date. What the market does is the best measure of a property's value.

The Wisconsin Property Assessment Manual does state that "the income approach may be the most useful method for valuing subsidized housing...." (9-45). The operative word in that quote is "may." The section further states that the income approach may be the most valuable because of the "limited availability of data." Data for federally subsidized housing, including Section 42 properties is increasingly available in light of an emerging market for that type of property (R40, p47 – Furdek; R45, p130 – Weissenfluh). The same page of the Wisconsin Property Assessment Manual in discussing the sales comparison approach indicates that it might be necessary to "to perform a statewide search to find comparable sales." Interestingly, Regency West's witness Scott McLaughlin actually had statewide data for comparable sales of Section 42 properties, but did not use it for a comparable sales analysis (See information in R43, Exhibits 45 and 46).

The Wisconsin Property Assessment Manual affirms that compliance with statutes and case law is mandatory (R42, Exhibit 29, p1-1). The Manual does not and could not overrule the Markarian hierarchy or other case law. Moreover, in the introduction to the Wisconsin Property Assessment Manual the Department of Revenue states,

> "Property owners should understand that WPAM was meant to be interpreted in its entirety. Extracting material from one section without understanding how it fits into the other sections can result in misunderstandings." (R43, Exhibit 108).

Four expert witnesses were of the professional opinion that there were comparable sales of properties sufficiently similar to Regency West to compel use of the

sales comparison approach to value. The Trial Court found the opinions of the City's witnesses in this regard "very compelling" (A-App 8, R31, p8). The Trial Court found:

> That four very experienced assessors concluded that the comparable sales approach could be applied here and that comparable properties existed for the sake of comparison is very compelling testimony. The properties relied upon by Scites were sufficiently "similar" to Regency West to allow for a valid comparison and, therefore, valid valuations. (A-App. 8, R31, p8)

The Trial Court found:

> Credibility of the assessors and experts is critical to this analysis. Based upon the years of experience, knowledge and demeanor, this Court finds the testimony of the City's assessors and experts more credible than that of the plaintiff's expert, Scott McLaughlin. The City's assessors and their experts are very familiar and experienced in valuing property in the Racine and Southeastern Wisconsin area and McLaughlin is not (A-App. 10, R31, p8).

Appellate Courts give great deference to Trial Court findings of witness credibility. Findings of fact by a Trial Court are upheld unless clearly erroneous. Wis. Stat. § 805.17(2); Lessor v. Wangelin, 221 Wis. 2d 659, 665-66, 586 NW 2d 1 (Ct. App. 1998) holding that witness credibility is a finding of fact. A finding of fact is clearly erroneous when it is against the great weight and clear preponderance of the evidence. Phelps v. Physicians Ins. Co. of Wis., 2009 WI 74, ¶ 39, 319 Wis. 2d 1, 768 NW 2d 615. "[A] factual finding is not clearly erroneous merely because a different fact-finder could draw different inferences from the record." State v. Wenk, 2001 WI App 268, ¶ 8, 248 Wis. 2d 714, 637 NW 2d 417. The weight and credibility to be given to expert witness opinions are "'uniquely within the province of the fact finder.'" Bloomer Housing Ltd. P'Ship v. City of Bloomer, 2002 WI App 252, ¶ 12, 257 Wis. 2d 883, 653 NW 2d 309,

quoting Schorer v. Schorer, 177 Wis. 2d 387, 396, 501 NW 2d 916 (Ct. App. 1993). The Trial Court's factual finding of greater credibility of the City of Racine witnesses compared to Regency West's one expert is not clearly erroneous.

The only "specialized" treatment that Section 42 property is to be given is described in Wis. Stats. § 70.32(1)(g). The statute prohibits an assessor from considering the effect on the value of the property of any federal income tax credits. Neither the City Assessor nor Mr. Weissenfluh and Mr. Furdek violated that statute in making a sales comparison valuation.

Regency West asserts in its brief, particularly at page 29, that while the City's four assessors (two of whom are licensed appraisers in Wisconsin) have considerable experience, they are not qualified to assess Section 42 properties. This even though Peter Weissenfluh and Raymond Anderson both have overseen the assessment of federally subsidized housing in Milwaukee and Racine, in the case of Mr. Weissenfluh 200 such properties (R45, p129). If Regency West's argument is taken to its logical conclusion, this would mean that assessors throughout the State of Wisconsin who have Section 42 properties within their jurisdiction would have to retain an outside "specialist" on Section 42 properties. This would certainly be a boon to Mr. McLaughlin's business, but it would be devastating to assessment practices throughout the State. Would the same requirement apply to the other nine types of federally subsidized housing listed on page 9-38 of the Wisconsin Property Assessment Manual (R42, Exhibit 34)? Regency West also argues that none of the four assessors testifying for the City of Racine "ever developed, bought, sold or managed a subsidized housing project, nor did they have any special training on assessing subsidized housing." (Page 29 of Regency West's brief). It

is unclear how the development or management of a subsidized housing project is a prerequisite credential for an assessor.

II. The City of Racine Expert Witnesses Correctly Made the Third Tier Income Valuation.

Metropolitan Holding Company v. Board of Review of the City of Milwaukee, 183 Wis. 2d 626, 634, 495 NW 2d 314 (1993), held that in an assessment of subsidized property employing the income approach, it is necessary to use actual income and expenses as opposed to market income. Since Regency West was a new construction as of January 1, 2012, actual income and expenses were not available. The Assessors Office therefore relied upon the experience of the City of Racine with other Section 42 properties in the City for the expense calculation. Although actual income and expense information was available at the time of trial, Regency West's witness Scott McLaughlin did not use actual information in performing his analysis for 2012, nor did he use information that he had for 2013. (Compare R43, Exhibit 40, his report, with his document, Exhibit 100). He explained that he was not going to use "after-the-fact" information, which he found to be irrelevant to the valuation (R38, pp182-183). That opinion makes no sense in a de novo proceeding, although it may have and probably would have validity in most certiorari appeals. In Rosen v. City of Milwaukee, 72 Wis. 2d 653, 666, 242 N.W. 2d 681 (1976), the Court accepted an assessor's valuation based upon sales that occurred after the valuation date.

The Metropolitan Holding holding was limited by Bloomer Housing Ltd. Partnership v. City of Bloomer, 2002 WI App 252, ¶ 20, 257 Wis. 2d 883, 653 NW 2d 309 and Mineral Point Valley Limited Partnership, 2004 WI App 158, which found that

market information was required in developing a capitalization rate on the expense side of the income approach equation. These cases are cited for this proposition in the Wisconsin Property Assessment Manual at 9-38 – 9-39 (R42, Exhibit 34). Regency West's witness Scott McLaughlin did not use market rates in determining the appropriate cap rate for his income valuation. The cap rate that the City of Racine used came from market rate information available to the City Assessors Office (R38, p239).

Janet Scites in her income approach stabilized expenses to bring the estimated and calculated expenses for Regency West into line with information available to the Assessors Office and its experience with other Section 42 properties in the City of Racine (R38, pp236-237; R39, pp5-6). She did the same with respect to the vacancy rate, using a rate in fact consistent with Regency West's actual reported rate of three vacancies out of 72 units (R38, pp235-236). Her cap rate was based upon the market rate as mandated by Bloomer and Mineral Point, information available to the Assessors Office (R38, p237). Wisconsin law supports the stabilization of income and expenses when using the income approach. Regency West's expert Scott McLaughlin conceded this to be an appropriate principle (R38, p182). ABKA Limited Partnership v. Board of Review of the Village of Fontana-on-Geneva-Lake, 224 Wis. 2d 551, 591 N.W. 2d 879 (1999).

Daniel Furdek and Peter Weissenfluh in their report and testimony also performed an income valuation of Regency West property as a cross check on their comparable sales analysis. They stabilized income and expenses (R45, pp11 and 135-6). According to direct capitalization analysis, they concluded that the property had a value based on an income approach of $3,830,000 for 2012 and $3,810,000 for 2013 (Exhibit 119, p58). Using discounted cash flow analysis, the income approach valuation was $3,981,000 for

2012 and $3,978,000 for 2013. The income valuations performed by the City of Racine and those performed by Real Estate Appraisals support the valuations of the Regency West property using sales comparison and demonstrate that the assessments of the City of Racine were not "excessive."

III. The Cost Approach to Valuation Performed by Real Estate Appraisals Further Corroborates the Valuation Based Upon the Sales Comparison Approach.

The City Assessors Office did not rely upon a cost approach valuation for the Regency West property for either tax year in question. Daniel Furdek and Peter Weissenfluh, however, in their report and testimony performed a cost approach valuation (R45, pp16-19; Exhibit 119, pp62-63). Although the cost approach to valuation is frequently difficult for subsidized housing, in this instance, the cost approach carries more than the usual validity because of the recently completed construction of Regency West. Moreover, because of the recent construction, particularly good and accurate data was available regarding the costs of construction, as well as the value of the tax credits (R40, pp90-96). Even Regency West's witness, Scott McLaughlin had to concede that new construction is the best type of building property to appraise for valuation purposes using the cost method, including valuation of tax credits, if one has the appropriate information (R38, p227). As a Regency West consultant, Mr. McLaughlin would have had full access to detailed cost information, including tax credit information.

In performing its cost approach, Real Estate Appraisals determined the value of the tax credits and deducted that value from the costs of construction (R43, Exhibits 131-132 and 133; R45, pp16-19). Real Estate Appraisals determined the discounted value of

the credits, which obviously could not be sold for 100% of the value since that would defeat any profit motive. Real Estate Appraisals used a value of 70% of the credits to determine their value. Mr. Lerner testified that tax credits will sell for less than face value (R37, pp227-8). Once the credits have been acquired by an outside party, income will be earned on them over a period time which therefore has to be reduced to present value. For Regency West, the cost approach, although a third tier approach like the income approach, served as strong validation of the sales comparison approach value of the City of Racine Assessors Office and of Real Estate Appraisals, Inc. (See Reconciliation of Value at R43, Exhibit 119, pp63-64).

IV. Regency West Failed to Show That the Tax Assessments Were Excessive

A. The Valuation of the City of Racine Assessor is Presumed Correct.

Courts are required to give presumptive weight to the City of Racine's assessment.

> The value of all real and personal property entered into the assessment roll to which such affidavit is attached by the assessor shall, in all actions and proceedings involving such values, be presumptive evidence that all such properties have been justly and equitably assessed in proper relationship to each other.
>
> Wis. Stats. §70.49(2).

The Court of Appeals in the case of Allright Properties, Inc. v. City of Milwaukee, explained how this presumption is to be applied in an action for excessive assessment under Wis. Stat. §74.37, holding as follows:

> A party that is dissatisfied with an assessment may bring an excessive tax assessment claim under Wis. Stat. §74.37(3)(d). "This is not a certiorari review." Bloomer Hous. Ltd. P'ship v. City of Bloomer, 2002 WI App 252, ¶11, 257 Wis. 2d 883, 653 N.W. 2d 309. Acting pursuant to §74.37(3)(d), the trial court makes determinations concerning excessive tax assessment claims "without giving deference to

> any determination made at a previous proceeding," including a proceeding before the board of review. Nankin v. Village of Shorewood, 2001 WI 92, ¶25, 245 Wis. 2d 86, 630 N.W. 2d 141. "The court must only give presumptive weight to the assessor's assessment." *Id.* (citing Wis. Stat. §70.49(2)). The assessor's assessment " 'is presumed correct only if the challenging party does not present significant contrary evidence' " and " '[n]o presumption of correctness may be accorded to an assessment that does not apply the principles in the *Property Assessment Manual*.' " Walgreen, 311 Wis. 2d 158, ¶17, 752 N.W. 2d 687 (citations omitted; bracketing supplied by Walgreen). Stated differently, when a city assessor correctly applies the *Property Assessment Manual* and Wisconsin statutes, and there is no significant evidence to the contrary, courts will reject a party's challenge to the assessment.
>
> Allright Properties, Inc. v. City of Milwaukee, 2009 WI App 46, ¶12, 317 Wis. 2d 228, 239-40, 767 N.W. 2d 567.

To overcome the presumption the owner must present "significant contrary evidence" or a challenge will be rejected. Adams Outdoor Advertising Ltd. v. City of Madison, 2006 WI 104, ¶25, 294 Wis. 2d 441, 717 N.W. 2d 803. The owner's evidence "must compel the conclusion that the assessor's valuation was incorrect." Xerox Corp. v. Wisconsin Dept. of Revenue, 114 Wis. 2d 522, 528, 339 N.W. 2d 357 (Ct. App. 1983).

Recently, in a case attacking an assessor's classification, the Wisconsin Supreme Court re-emphasized that the presumption applies to the underlying assessment. The Supreme Court, referencing Wis. Stat. §70.49(2) stated:

> Nevertheless, "the underlying assessment still carries a presumption of correctness."
>
> Sausen v. Town of Black Creek Board of Review, 2014 WI 9, ¶30, 352 Wis. 2d 576, 843 N.W. 2d 39.

In addition to overcoming the presumption of correctness, Regency West also has the burden of proof on each and every issue associated with the assessment. The Sausen Court stated, "[T]he taxpayer recognizes, as we do that the concept of presumption of

correctness and burden of proof are intertwined." Sausen, at ¶20. "The concept of a 'presumption' is very familiar in the law, and it is closely related to the concept of a 'burden.'" Id.

> [T]he assessment needs no support by evidence in the first instance, but must stand, unless shown to be incorrect by reasonably direct and unambiguous evidence.
>
> Sausen v. Town of Black Creek Board of Review, 2014 WI 9, ¶34, 352 Wis. 2d 576, 843 N.W. 2d 39, citing State ex rel. Giroux v. Lien, 108 Wis. 316, 317-8, 84 N.W. 422 (1900).
>
> The court has stated that a landowner must overcome "the prima facie presumption in favor of the original *assessment*."
>
> Sausen, at ¶36; citing, State ex rel. Vilas v. Wharton, 117 Wis. 558, 562, 94 N.W. 359 (1903). (emphasis in original)

Based upon the language in Sausen, not only is the City of Racine's assessment afforded the presumption of correctness, but in addition, Regency West has the burden to show if the assessment is not consistent with the law. The Wisconsin Supreme Court addressed how the burden of proof is to be applied when determining whether a taxpayer has overcome the presumption of correctness afforded an assessment. The taxpayer who objects to an assessment bears the burden of proof to show that the assessment, on any issue, does not follow the law. Sausen, ¶¶ 36-38.

Thus, Regency West must not only overcome the presumption of correctness, but also must satisfy the burden of proof on all elements of its claim. The burden of proof does *not* shift to the government at any time. "Conditions set forth in the *Property Assessment Manual* cannot be construed to change long-standing law and create a legal presumption that shifts the burden of proof from a taxpayer to a city." Doneff v. City of Two Rivers Board of Review, 184 Wis. 2d 203, 216, 217, 516 N.W. 2d 383 (1994). Instead, the overall burden of proof remains with Regency West. Relying on the testimony of Scott McLaughlin and his

four page report, in the face of the evidence of four highly qualified assessors, Regency West failed to carry that burden.

B. Scott McLaughlin Violated the Assessment Hierarchy.

Wisconsin Statutes, Wisconsin Case Law, and the Wisconsin Property Assessment Manual unequivocally establish a hierarchy of valuation methods for assessments, the three tiers or the Markarian hierarchy. Wis. Stats. § 70.32(1); Adams Outdoor Adver. Ltd. vs. City of Madison, 2006 WI 104, ¶ 34. Evidence of an arm's-length sale of the property in question is the best evidence of fair market value and is considered tier one. Absent a recent sale of the subject sale, sales of reasonably comparable properties must be considered as tier two evidence. Only if there is no arm's-length sale and there are no reasonably comparable sales in the third tier methodology be used. Adams Outdoor, id.

Scott McLaughlin did not adhere to Wisconsin law and arriving at his valuation opinion. He showed ignorance of the three tier approach, testifying that the Wisconsin Property Assessment Manual requires that the income approach be used as the primary method of valuing government subsidized housing (R38, p161). Although the Manual states that the most reliable method of valuing Section 42 properties "may" be the income method, it does not state that the three tier approach is to be ignored in valuing Section 42 property. It could not assert that proposition since there is no case law supporting it.

Scott McLaughlin further displayed his lack of familiarity with the Wisconsin Property Assessment Manual when he was unable to recognize the Manual's introduction (R43, Exhibit 108; testimony at R38, p178). Mr. McLaughlin's incorrect approach to the assessment hierarchy is likely due to his lack of experience in this specific field of valuation. He acknowledged he never testified in an assessment challenge of a Section 42 property and

has never testified in an assessment challenge of a Section 8 property at trial or deposition (R38, pp190-192).

Mr. McLaughlin claimed he could not use the sale comparison approach for the Regency West property because of the lack of sales of reasonably comparable properties. However, he had substantial information regarding sales of Section 42 properties shown in his expense comparison of comparable properties (R43, Exhibit 45), and his tax credit improved sales summary (R43, Exhibit 46). The sales he listed and analyzed in those exhibits were relatively recent. He clearly had extensive information available to him concerning the sales of these properties which should have permitted him to make adjustments necessary for sales comparison valuation. He declined to do the work necessary beyond his short four page report. He testified there was no need to do a sales comparison (R38, p175). His only testimony concerning specific comparable sales was limited to his criticism of the selections of sales and adjustments made by City Assessors Ray Anderson and Janet Scites, Appraiser Daniel Furdek and former Milwaukee City Chief Assessor Peter Weissenfluh. (The Trial Court's decision concluded that the properties relied upon by the City of Racine Assessors Office were sufficiently "similar" to Regency West to allow for a valid comparison). (A-App 8, R31, p8).

C. Scott McLaughlin's Income Approach to Value the Regency West Property is Invalid.

1. Mr. McLaughlin Violated the Bischoff Rule.

Mr. McLaughlin compounded the inadequacy of his approach with regard to the mandated hierarchy by incorrectly using the income approach to valuation. In Bischoff v. City of Appleton, 81 Wis. 2d 612, 619, 260 NW 2d 773 (1978), the Court held that income "cannot be considered as the sole controlling factor in determining value of either real or

personal property." The Bischoff rule was confirmed in Walgreen Co. v. City of Madison, 2008 WI 80, ¶¶72-74, 311 Wis. 2d 158, 752 NW 2d 687. The Walgreen decision noted the absurdity of a result which would follow it, the property is not income producing and only the income approach to valuation was used. If that were to be the situation, the value of the property would default to zero. Adams Outdoor also commented on the Bischoff rule:

> In this case, we think that would nullify the so-called Bischoff rule if we permitted the City assessor to object to all approaches and factors other than an income approach. We think it extraordinary that the assessor rejected out of hand such factors as cost, depreciation, replacement value, and insurance carried.
>
> Adams Outdoor, 2006 WI 104, ¶ 55

Even though Mr. McLaughlin represented the property owner, meaning he had available to him contemporary cost information for this newly constructed property, he did not consider cost. He could have determined replacement value from general information available, as well as insurance carried. He did none of that, simply providing a four page report with estimated and some reported income and expense information attached. He admitted he did not apply two methods of valuation (R38, p175).

Regency West argues in its brief that the Courts have upheld sole reliance upon the income approach for subsidized housing. Cases addressing the issue have rendered decisions based upon solely the income approach in instances where both parties have agreed that that is the correct manner of valuation for the property at issuing those cases. See Peter Weissenfluh testimony based on experience regarding this contention (R45, pp134-135).

Regency West cites Northland Whitehall Apts. Ltd. P'ship v. City of Whitehall Board of Review, 2006 WI App 60, 290 Wis. 2d 488, 713 NW 2d 646, as supporting the proposition that an assessor's value on comparable sales for valuation should be rejected.

Northland rejected an assessor's attempt to use comparable sales for the reason that the sales were not reasonably close in time and were not shown to be arm's-length. The assessor also failed to make any reasonable effort at adjustments of the properties. The Northland case is unlike the subject case which involves the Court upholding a comparable sales approach by the Assessors Office with appropriate adjustments and arm's-length sales confirmation and similarly detailed adjustments and confirmation of arm's-length sales by Mr. Furdek and Mr. Weissenfluh. The Northland case also resulted in a decision that remanded the case to a Board of Review for further deliberations. It did not constitute an outright rejection of the appropriateness of the comparable sales approach to valuation, if reasonable adjustments were made. The City of Racine witnesses used recent sales, confirmed arm's-length transactions, and made reasonable adjustments.

2. Mr. McLaughlin Improperly Calculated His Cap Rate.

Mr. McLaughlin applied a capitalization rate of approximately 10.5% for both tax years (R43, Exhibit 40). The City Assessors Office and the outside appraisers of Real Estate Appraisals used a cap rate in the range of 8-1/2 – 9% (R42, Exhibit 11 and 12, and R43, Exhibit 119, p57). Mr. McLaughlin based his capitalization rate on cap rates for other Section 42 properties (R43, Exhibit 46).

Mr. McLaughlin conceded that he did not know Racine market cap rates (R38, p181). Assessor Janet Scites testified that the cap rate she employed in developing an income approach to value the Regency West property was based upon market rates (R38, pp237-238). Daniel Furdek and Peter Weissenfluh confirmed that using a market cap rate is appropriate and legally mandated for assessment valuation of properties in Wisconsin (R45, pp21-22; R45, pp137-138).

The Court held in Bloomer Housing, 2002 WI App 252, ¶ 20, that a reviewing court addressing an assessment valuation issue for subsidized properties must use a market mortgage rate on the expense side of the equation for determining valuation pursuant to the income approach. Mineral Point Valley Ltd. Partnership, 2004 WI App 158, ¶ 13, followed the City of Bloomer in concluding that a capitalization rate based on a subsidized interest rate is impermissible, and that a market rate must be used. The formula for valuing property pursuant to the income approach is value equals income divided by the cap rate. Therefore ,the larger the cap rate, the lower the calculated value. Conceding Mr. McLaughlin's income figures, his use of an inflated cap rate results in a depression of value of the property of between $450,000 and $650,000, depending on whether a cap rate of 9.0% or 8.5% is used instead of his higher cap rate.

3. Mr. McLaughlin Incorrectly Analyzed Income and Expenses for the Property.

Metropolitan Holding Company v. Board of Review of the City of Milwaukee, 173 Wis. 2d 626, 634, 495 NW 2d 314 (1993), held that in an assessment of subsidized property by the income approach, one must use actual income and expenses as opposed to market income. For the City of Racine's Assessors Office assessment of Regency West for 2012, actual income and expenses were not available since it was new construction. The Assessors Office therefore relied upon the experience of the City with other Section 42 properties. For the January 1, 2013 valuation, data was available for 2012 and later for most of 2013, supplemented by budget information. Even though actual income and expense information was available, Mr. McLaughlin did not use it for calendar 2012, explaining that it was "after-the-fact" information that was not relevant (R38, pp182-183). As previously noted, in a certiorari appeal, that might make sense, but this is not a certiorari appeal. See Rosen, 72 Wis. 2d 653, accepting information based upon sales occurring after the valuation date.

Mr. McLaughlin ignored the uncontroverted testimony that only three of the 72 units in Regency West were vacant as of February 2012, a rate of approximately 4% (R38, p5, testimony of Mr. Lerner). Mr. McLaughlin used a 7% vacancy rate. He also used expense figures for Regency West that varied drastically from 2012 to 2013 for payroll expenses, advertising expenses, and maintenance costs.

Mr. McLaughlin failed to stabilize expenses, a clear necessity when one is dealing with new property having inevitable start up costs. This is demonstrated dramatically with his strange calculations concerning advertising expense. His Exhibit 45 (R43) was an expense comparison that he prepared for similar properties that showed advertising expenses ranging from .4% to 1.3% and averaging less than 1%. He did not consider that information in his expense calculation. He failed to account for significant variations in expense figures from one year to the next. He had to stabilize income and expenses, but failed to do so. See ABKA Limited Partnership, 224 Wis. 2d 551, 564. On the other hand, Daniel Furdek explained his stabilization changes made in his income valuation during the trial (R45, pp15-16). Peter Weissenfluh did likewise (R45, pp135-136). Janet Scites also stabilized the numbers (R39, pp5-6).

D. Scott McLaughlin's Four Page Report Failed to Comply with the Uniform Standards of Professional Appraisal Practice (USPAP), as Required by Wisconsin Law.

Wis. Stat. § 458.24 granted authority to the Real Estate Appraisers Board to promulgate rules based in whole or in part upon the Uniform Standards of Professional Appraisal Practice (USPAP). Pursuant to that authority, the Department adopted USPAP in Wis. Adm. Code Chapter SPS 86. USPAP standards impose ethical requirements upon appraisers valuing property. Multiple chapters of USPAP were submitted in evidence: definitions, Standard Two reporting requirements, ethics, record keeping requirements,

jurisdictional exception, and scope of work requirements (R43, Exhibits 101, 102, 103, 104, and 105 respectively as well as USPAP 2012-2013, Exhibit 37).

Astonishingly, Mr. McLaughlin testified there is no Wisconsin law requiring USPAP compliance (R38, p96). Mr. McLaughlin also testified that he did not have to comply with USPAP because his client, Foley & Lardner, did not require compliance (R38, p97). That opinion ignored the reality that his report was likely to be presented to representatives of the City of Racine for purposes of reviewing the assessment valuations, and if that failed, it was likely going to be presented to the Court for consideration.

Mr. McLaughlin, in any event, was of the interesting opinion that USPAP requirements (mandated by Wisconsin law), such as scope of work, certification, the standard two documentation, compliance, and record keeping were merely technical and boiler plate (R38, p225). Although he felt compliance was not necessary, Mr. McLaughlin prepared a "report card" (R43, Exhibit 47) criticizing Real Estate Appraisals, Inc., claiming lack of compliance in their extensive retrospective appraisal (R43, Exhibit 119).

His four page report does not define the scope of work, has no certification, and fails to contain the reporting information required. In summary, Standard Two (R43, Exhibit 102) requires the report to contain sufficient information to be understood, disclose assumptions and conditions, state the type of report, identify intended users, describe scope of work and intended use, describe the information analyzed and the reasoning supporting the analysis, opinions, and conclusions, and be certified. Mr. McLaughlin's report, Exhibit 40, violates USPAP in nearly every way possible.

Mr. McLaughlin's opinion regarding the non-applicability of USPAP is contrary to Wisconsin law. Wis. Adm. Code Section SPS 86.01(1) states:

> "Certified and licensed appraisers shall comply with the standards of practice established by ch. 458, Stats., and

> chapters SPS-86 and the Uniform Standards of Professional Appraisal Practice (USPAP)."

SPS 86.01(2) states:

> All appraisals performed in conjunction with federally related transactions and non-federally related transactions shall conform to the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time the appraisals are performed.

Mr. McLaughlin's testimony on USPAP compliance is wrong. His report violates Wisconsin law in failing to meet the needs of the ultimate user of the valuation of his property.

CONCLUSION

Overwhelming competent and credible evidence at trial supported the City of Racine's assessment for the property of Regency West for both 2012 and 2013. Even if some sort of argument can be made that the assessments for those years were not exactly correct, there is absolutely no significant contrary evidence to defeat the presumption of correctness of the City Assessors' valuation for 2012 and 2013. There is no evidence that the assessment for either of those years was "excessive." In order for Regency West to prevail, the Court would have to find that the Markarian hierarchy does not apply to federally subsidized housing. The Court would also have to overrule the holdings of Bischoff and cases following that the sole use of the income approach to valuation for assessment purposes is insufficient, and that it must be supported by other indicators of value, such as cost, depreciation, insurance, etc. The Court would also have to overrule Rosen which held that post-assessment date information can be used in order to determine a property's value as of the assessment date. The Court would also have to hold that, contrary to the State Administrative Code, there is no need for compliance with USPAP in an appraiser's report attacking a municipal assessment. Finally, the Court would have to

overrule the Bloomer and Mineral Point Holdings that market rates are to be used for determining cap rates for subsidized federal housing.

The opinions of assessors and appraisers on property value are just that: opinions. There will inevitably be variation in interpretation of data and the extrapolation of value from data. To reject the opinions of the four assessors, two of whom were certified licensed general appraisers in the State of Wisconsin, would require the Court to insert itself into their shoes and find that each and every one of them had made drastic errors in judgment in arriving at their opinions, notwithstanding the experience and qualifications that each of them had.

There can be no other result in this case than affirmance of the Trial Court judgment.

Dated this 4 day of March, 2015.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in § 809.19(8)(b) for a brief produced using proportional serif font. The length of this brief is 9828 words.

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E-FILING CERTIFICATION

Pursuant to Wis. Stat. § 809.19(12)(f), I hereby certify that the text of the electronic copies of Respondent's Brief and Appendix are identical to the text of the paper copies.

Dated this 4 day of March, 2015.

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CERTIFICATE OF MAILING

I certify that Respondent's Brief and Appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class or priority mail, or other class of mail that is at least as expeditious, on March 4, 2015. I further certify that the Brief and Appendix was correctly addressed and postage was pre-paid.

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