BOARD OF REVIEW
Wednesday, October 24, 2007 – 1:00 p.m.

PRESENT:	Messrs. Benz, Rice, and Schilling -3
ALSO PRESENT:	Mr. Miner, Assessor; Ms. Isleb, Consultant for the Assessor; Mr. Dineen, Attorney for the Board
	Mr. Schilling in the Chair

379-9999-41
9900 Innovation Drive

City Clerk Ledesma swore in Steve Quataert, 4415 Metro Parkway, Fort Myers, Florida, Gene Miller, 437 Badger Drive, Evansville, Wisconsin, Mr. Miner and Ms. Isleb. Attorney Maureen A. McGinnity, Foley & Lardner LLP, 777 E. Wisconsin Avenue, Milwaukee, was present on behalf of the property's lessee, as were Messrs. Quataert and Miller. Attorney Paul Alexy, Arenz, Molter, Macy & Riffle, SC, 720 N. East Avenue, Waukesha, was present on behalf of the assessor. No one was present on behalf of the property owner, Bell Marquette I LLC, II LLC and III LLC. (It was determined that GE Medical Systems LLC is eligible to file the objection as it is responsible for payment of taxes.)

The assessor's valuation as of January 1, 2007:	Land	$ 3,680,400
	Improvements	$91,815,000
	Total	$95,495,400

The estimated fair market value is $96,460,000.

The following exhibits were presented and entered into the record:

Petitioner's Exhibits

Exhibit 1	Assessment notices and objection
Exhibit 2	Excerpts of Nicholson prospective appraisal as of 1/31/06
Exhibit 3	2/10/06 response to assessor request for construction cost data
Exhibit 4	2/7/07 response to assessor request for construction cost data
Exhibit 5	Excerpts of Battuello appraisal as of 1/1/07
Exhibit 6	6/18/07 letter to assessor re agreed $63-65,000,000 value range
Exhibit 7	Excerpts from lease
Exhibit 8	7/13/07 newspaper article re sale
Exhibit 9	Assessor notes re initial 2007 assessment
Exhibit 10	Assessor notes re revised 2007 assessment
Exhibit 11	Summary of post 2006 revaluation sales
Exhibit 12	Gene Miller resume
Exhibit 13	Noah's Ark Supreme Court decision
Exhibit 14	Noah's Ark Court of Appeals decision
Exhibit 15	Excerpts from Wisconsin Property Assessor's manual

Assessor’s Exhibits

Exhibit 1	Assessor’s qualifications and credentials; Wisconsin’s assessment methodology
Exhibit 2	Property record card
Exhibit 3	Permit history
Exhibit 4	Assessment history
Exhibit 5	Ownership history
Exhibit 6	Cost approach
Exhibit 7	Reconciliation of values
Exhibit 8	Summary and value conclusion

Ms. McGinnity stated that the fair market value should be $63,000,000. The issue is not a valuation argument, however, so much as a lack of uniformity argument. The July 2007 sale of this property was taken into account, which is well after the January 1, 2007 assessment date. Other properties’ values, however, were not changed based upon their current-year sales.

Mr. Quataert, the property tax manager for GE Medical Systems LLC, stated that this ‘build-to-suit’ building was constructed by Irgens Development for GE’s global headquarters. GE does not own the building. The lease is a 12-year lease initially with two five-year extensions at GE’s discretion. The building was substantially complete by January 2006. The initial 2006 assessment was $71,784,400, a solid starting point for the first year.

Mr. Quataert suggested to the assessor’s office that an appraisal be performed for 2007 so the true value could be determined. The assessor’s office agreed with the suggestion and the appraisal was subsequently completed in June 2007 by Gary Battuello of Ramsland & Vigen, Inc., 302 W. Super Street, Duluth, Minnesota.

Mr. Quataert stated he was very surprised when the appraisal came back with a value range of $53-$55 million, and a high of $58,000,000. Mr. Quataert opined that a value of $63-65 million was more appropriate. Ms. Isleb was also in agreement that the appraisal figure was low; Mr. Quataert stated he anticipated an assessed value of approximately $64-66 million after discussions with the assessor’s office. When the value came out at $71,784,400 (the same as the 2006 valuation) in August 2007, he felt it was somewhat high, but opted not to appeal at that time.

In June 2007, an investment firm purchased the property. Mr. Lenski, Deputy Assessor, had initially indicated to Mr. Quataert that there would not be a change in assessed value even though the office could have used the sale to adjust the value. Since the office was unwilling to reduce the value to the $63-$65 million dollar range, he, Quataert, opted to accept it, feeling that the $71,784,400 figure represented something of a compromise between both parties.

However, a notice of revised assessed value was issued on September 13, 2007, showing a revised 2007 figure of $95,495,400. Mr. Quataert, very upset, contacted the assessor’s office, but did not get a return call until after the ‘open book’ period had ended. Mr. Quataert subsequently spoke to Messrs. Miner and Lenski who advised that a sale determines the market within the very narrow group who buy this kind of property.

Mr. Quataert stated that to his knowledge no other properties with current-year sales saw their assessed values adjusted based upon those sales. In addition, based upon information gleaned from the city’s website, neither did sales occurring in 2006 affect 2007 assessed values.

Ms. McGinnity noted that an appraisal ($72,000,000 upon completion) had been performed for the assessor’s office in August 2004 by The Nicholson Group LLC, 555 Industrial Drive, Hartland, Wisconsin on the project (then unbuilt). Mr. Quataert was unaware of its existence during his discussions with the assessor’s office prior to the initial setting of value.

Mr. Miller, retired from the Wisconsin Department of Revenue, was called to testify on behalf of GE. Mr. Miller was Bureau Director of Equalization for the DOR. During the discharge of his duties he conducted annual training of assessors and board of review members. Uniformity issues, among other topics, are covered in training. Uniformity means each individual property owner is assessed and taxed fairly compared to other owners of properties. Required methodology was not complied with if the revised 2007 assessment was based on the late June 2007 sale of the subject property, but adjustments were not also made to other properties based on 2007 sales.

Mr. Miller referenced a 1997 decision by the Court of Appeals involving Noah's Ark water park v. the Village of Lake Delton. This case was appealed to the Wisconsin Supreme Court in 1998 when the assessor's office increased the assessment (in a maintenance year) based upon the sale of Noah's Ark. Maintenance years occur when annual revaluations are not occurring for that year such that all properties are brought to fair market value status. The Supreme Court decided there was non-uniformity involved if an increased assessment occurred after a sale and other properties were not also re-examined after a sale.

Mr. Miller opined that the assessor's office ought to have analyzed the June 2007 sale to determine whether it was an arm's length sale, and either retained the information for use in annual market updates, or filed it until the next revaluation. It was inappropriate (not legal) to apply the sales information as it was applied.

Mr. Alexy questioned Mr. Miller at some length and noted that assessors must sometimes review properties in maintenance years because of annexations, the razing or partial remodeling of buildings, and new construction.

RECESS 2:45 – 2:55 p.m.

Mr. Alexy called former Wauwatosa Assessor Kathleen Isleb to testify. She confirmed that she had had conversations with GE representatives concerning valuation of the subject property, and that she was aware of the appraisal performed in June 2007 by Gary Battuello. She reviewed the appraisal and concurred with Mr. Quataert that the figure was lower than expected. Until the time of the appraisal, costs were used to determine value. This is a unique property, a global headquarters for a division. There are no comparables in the area. If information on a recent, valid sale is available, it is the best determination of value. In this instance there is no reason to believe this was not an arm's length sale, the likely result of months of negotiations.

Ms. Isleb agreed that with all properties in the city, the same tax rate applies. For valuation purposes, different categories of properties (i.e., office buildings, gas stations, etc.) are created. The subject property is unique, but it was not singled out; this is not an issue of uniformity as it was treated as its own entity. The owners sought the appraisal and approached the city. The last revaluation was completed as of January 1, 2006; the appraisal was performed in mid-2007. As of January 1, 2006, the city received its equalized value; the state deemed the city to be at 99.82% of fair market value after completion of the 2006 Board of Review. This is an aggregate ratio and applying it to a single property might not give the best estimate of fair market value.

In reviewing petitioner's exhibit #11 which listed parcels that sold in late 2005 and in 2006, Ms. Isleb pointed out that the city sees over 1,000 property transfers annually. Though the list shows that none of these properties' values were adjusted from 2006 to 2007 based upon their sales, a list with 12 sold properties (exh. #11) is not indicative of the city's market.

With the subject property, the assessment roll had not yet been closed at the time of the sale. When the sale came in at over $95,000,000, staff would have been remiss in not considering it. It was not her responsibility, however, to make the final determination.

Ms. McGinnity pointed out that Ms. Isleb had initially recommended a 'no change' status for the property even after the sale became known (per exh. #9). She questioned how staff could have adjusted the value when it had no other information except the real estate transfer – which does not provide detailed information helpful to a valuation determination. Even now, per an open records request, the assessor's office does not have any other information on file about the sale except Ms. Isleb's notation that it had taken place.

Mr. Lenski, Deputy Assessor, was sworn in. He explained the circumstances surrounding the issuance of the revised valuation. Since the assessment roll had not yet closed, staff was free to look at any additional information. The tenant had asked for a property review; appraisal information was considered, as was the sales information that staff became aware of. He was not aware of any staff member speaking to either the buyer or the seller during the late August/mid September time period, nor were inquiries made about terms of the sale.

Mr. Miner, Assessor, became aware of the GE property within days of his August 30 start on the job. Since the assessor's affidavit had not yet been signed, changes to the roll could still be made. For example, changes may be made after meeting with property owners during the 'open book' period.

RECESS 4:35 – 4:40 p.m. to relocate the meeting from the Common Council chambers to Committee Room #1.

Mr. Miner detailed the approach used to arrive at the 2006 assessment established once construction was finished. Absent other information, new construction is valued based upon the cost approach. Nicholson's 2004 pre-construction appraisal lent credibility to the first appraisal. Typically, the hierarchy used to establish market value is sale of subject property, sales of comparables, and other information (i.e., cost of construction, appraisals). If a sale occurs, it is erroneous to use other methods to value property. In this instance, had all that existed were the two appraisals and cost data, that same methodology would have continued to have been used. Once news of the sale became known, Mr. Miner verified that it had occurred and contacted the Register of Deeds to obtain the deed. Mr. Miner confirmed that the valuation increase was based on the recent sale. The subject property was not singled out, however. It was one of a number of properties that were still being reviewed in the days prior to the closing of the roll.

RECESS 5:50 p.m. – 6:00 p.m.

The testimony was closed and both parties presented closing summaries. Ms. McGinnity pointed to the similarity of this case with the Noah's Ark case and how that issue was based upon fairness of treatment among taxpayers. Mr. Miner has acknowledged that the valuation increase came about because of the sale. This property was treated differently than the others, as other sales did not trigger reviews and revised valuations for those properties. Ms. Isleb and Mr. Quataert agreed in 2006 to again discuss the value of this property in 2007. Just because GE Medical Systems questioned its assessment in 2007 does not justify violating the uniformity clause of the constitution. The taxpayer still feels the assessment should be in the $63-65,000,000 range. The sales information should not be applied until the next citywide revaluation.

Mr. Alexy opined that the Noah's Ark case is different from this issue. Furthermore, that property owner did not seek valuation review, while the GE property owner did. The subject property is unique not from the uniformity clause standpoint, but from the standpoint of establishing a market price for the first time. Even in a maintenance year, there are exceptions where valuations are examined. These may be instances of new construction, partial remodelings, annexations, or property owner requests. The construction costs provided on this property provided a good starting point. Data from the actual sale of the property provided important information that could not be ignored.

Mr. Dineen instructed the Board that this case has legal questions to consider as well as valuation questions. One issue is whether there was a violation of the uniformity clause. Noah's Ark is an applicable case, though probably overstated by the taxpayer's attorney. There are differences, however, in the two cases. Based on Wisconsin law, an assessor can consider recent sales after January 1, and if it is an arm's length sale, can rely on it. The property owner has the burden of proving the assessor's office is not correct. Mr. Miller may have overstated the point that an assessor can never increase a property's valuation based upon a recent sale. If the assessor's office did not have evidence that this was not an arm's length sale, it is the responsibility of GE to prove it was not. The taxpayer has argued the assessor's office violated the uniformity clause. The Board has to conclude whether there is a violation.

Mr. Benz noted that generally, values are set based on most recent sales. Sales that are not arm's length sales are generally between family members. He was not concerned with the higher valuation, noting that the investors obviously felt it is worth the sales price.

Mr. Schilling observed that Mr. Miller's testimony was persuasive, and that the Noah's Ark case has applicability. Both parties were satisfied, more or less, with the $71,784,400 valuation; the taxpayer was very unhappy with the revised assessment. Mr. Schilling was troubled that it appears that this valuation increase was the only one made based upon sales data. However, paying taxes based upon a $71 million dollar valuation does not seem appropriate if the property is actually worth $95 million. Perhaps annual market adjustments are warranted. With respect to the property's value, Mr. Schilling pointed out that the taxpayer relied on the appraisal which set the $58 million dollar value; however, the taxpayer did not present evidence to support the claimed value of $63-65,000,000. He expressed the inclination that there was a violation of the uniformity clause.

Mr. Rice also expressed concern with the apparent lack of uniformity, as there seems to be some evidence of singling out of this property. He agreed that the Noah's Ark case appears to have some applicability to this issue. There may be lack of acting in good faith on the part of the city since it had been engaged in ongoing discussions with the taxpayer about determining the valuation. Mr. Rice pointed out that both parties failed to verify with the parties to the sales transactions that it was, in fact, an arm's length sale.

Mr. Dineen reminded Board members that the burden of proof is on the property owner (tax payer in this instance.) He agreed that neither party has established that this was or was not an arm's length sale. The larger issue is the uniformity clause.

> It was moved by Mr. Schilling, seconded by Mr. Rice that the property owner (tax payer in this case) has established that a violation of the uniformity clause occurred, but has not established a property value of $63-65,000,000. The assessed value shall be set at $71,784,400. Roll call vote, Ayes 2, Noes 1 (Benz).

Stipulations and Agreements.

Assistant City Attorney Beth Aldana presented the Board with various stipulations and agreements. Some reflect a status change from taxable to tax-exempt; others are adjustments in valuation based upon a number of issues.

For purposes of addressing legal issues involved, the following three properties were categorized as exempt. A declaratory judgment will be pursued as to whether they qualify for this exemption. The properties will continue to make payments in lieu of taxes until the court ruling. They were presented for information only:

Harwood Place, Inc., Tax Key #371-0264-04
United Lutheran Program for the Aging, d/b/a Luther Manor, Tax Key #222-9983-01

San Camillo, Inc., Tax Key #410-9998-01

In the following instances, both parties have agreed to this procedure: The assessor's office will be sustained without hearing and the owner's procedural obligations will have been satisfied to have a hearing before the Board:

201 N. Mayfair Road, Tax Key #411-9976-05
N. Mayfair Road, Tax Key #411-9994-03

> It was moved by Mr. Benz, seconded by Mr. Rice to agree to the stipulations and uphold the assessor's valuations of $67,118,400 (411-9976-05) and $872,300 (411-9994-03). -3

The following stipulation with the Heart Hospital includes a change in status from taxable to tax-exempt, and includes a change in valuation:

10000 W. Blue Mound Road, Tax Key #410-9999-01 and Personal Property Account #289575

	From	**To**	**Change**
Land	$ 5,785,200	$ 2,425,800	-$ 3,359,400
Improvements	$56,917,000	$10,445,700	-$46,471,300
TOTAL	$62,702,200	$12,871,500	-$49,830,700

> It was moved by Mr. Benz, seconded by Mr. Rice to agree to the stipulation and the valuation change based upon the exemption. -3

Based on information provided, the city will exempt the property; no Board action is required:

10437 Innovation Drive, Personal Property Account #177200

	From	**To**	**Change**
Land	$0	Exempt	Exempt
Improvements	$2,987,220	Exempt	Exempt
TOTAL	$2,987,200	Exempt	Exempt

Based on new information provided, the city agrees to change the status from taxable to tax exempt; no Board action is required:

St. Camillus Health System, Inc., 600 N. 103rd Street, Tax Key #410-9998-03
St. Camillus Health System, Inc., 624 N. 103rd Street, Tax Key #410-9998-11
St. Camillus Health System, Inc., 10223 W. Wisconsin Avenue, Tax Key #410-9998-12
St. Camillus Health System, Inc., 10213 W. Wisconsin Avenue, Tax Key #410-9998-13
St. Camillus Health System, Inc., 530 N. 103rd Street, Tax Key #410-9998-04

The following stipulation was agreed to, resulting in a change in valuation:

The Lutheran Home, Inc., 7500 W. North Avenue, Tax Key #331-0832-00

	From	**Change**
Land	$ 375,000	$ 375,000
Improvements	$1,395,300	$1,220,900
TOTAL	$1,770,300	$1,595,900

It was moved by Mr. Rice, seconded by Mr. Benz to
agree to the stipulation. -3

The following stipulation involves personal property on leased land:

9000 W. Wisconsin Avenue, Personal Property Account #050510

	From	**Change**
Land	$ 0	$ 0
Improvements	$1,553,600	$1,240,200
TOTAL	$1,553,600	$1,240,200

It was moved by Mr. Benz, seconded by Mr. Rice to
agree to the stipulation. -3

There was no other business before the 2007 Board of Review.

It was moved by Mr. Rice, seconded by Mr. Benz to
adjourn the 2007 Board of Review *sine die.* -3

The meeting adjourned at 7:03 p.m.

Carla A. Ledesma
Secretary to the Board