



**State of Illinois**  
**PROPERTY TAX APPEAL BOARD**

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**KEVIN L. FREEMAN**  
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**MICHAEL I. O'MALLEY**  
*Executive Director & General Counsel*

**Minutes of the**  
**Property Tax Appeal Board**  
**April 14, 2023 – 10:00 a.m.**  
**Springfield & Des Plaines, Illinois**

**1. Roll Call:** Chairman Kevin Freeman, Mr. James Bilotta, Sarah Buckley, Dana Kinion, and Robert J. Steffen.

**Staff:** Michael O'Malley, Executive Director and General Counsel  
Carol Kirbach, Acting Chief Administrative Law Judge  
James Moffat, Chief Financial Officer & Human Resources Manager  
David Suarez, Chief Information Officer  
Phyllis McJunkins, Recording Secretary

**Guests:** Call-in connections are identified as follows:

Mike Andre, Eugene L. Griffin & Associates, Ltd.  
Tom Atherton, Thomas M. Atherton, Attorney at Law  
Beth Bauer, Hepler Broom  
Michael Bullock, Property Tax Appeal Board  
Terry Griffin, Eugene L. Griffin & Associates, Ltd.  
Nick Jordan, Worsek & Vihon  
Thomas Kelly  
Mark Pogalz  
Brittany Thesis, Whitt Law LLC  
Stuart Whitt, Whitt Law LLC  
Unidentified callers – 4

Chairman Freeman convened the meeting at 10:00 a.m. and welcomed the Board Members and the Management Team to the Property Tax Appeal Board Meeting.

**2. Approval of Minutes from Previous Meeting**

Mr. Bilotta motioned to approve the Board Minutes of March 14th, 2023, as presented. Ms. Kinion seconded the motion, which carried 4-0, and Chairman Freeman abstained.

**3. Adoption or Amendments to the Agenda**

**BOARD MEMBERS**

**Jim Bilotta**  
*Frankfort*

**Robert J. Steffen**  
*South Barrington*

**Dana D. Kinion**  
*Springfield*

**Sarah Buckley**  
*Chicago*

Chairman Freeman motioned to amend the agenda to move items B and C from Section 5 up in the agenda for discussion; Mr. Steffen seconded the motion, which carried 5-0.

**Item B from Section 5 - Discussion of Motion**

WRB Refining LP: 22-03099.001 thru .009-1-3 (Madison)

The Board acknowledged that Tom Atherton and Beth Bauer, representing the appellant, WRB Refining LP were present.

In summary, Mr. Tom Atherton spoke to the motion to stay the evidence in the 2022 case until the 2021 case covering the same parcels is resolved. As of early this morning, no one else is a party to either case, no intervention, and no appearance was filed by the BOR. The appellant is the only party to either case. The typical appeal to the PTAB presents one issue, what is the fair cash value of some identified real property? But this case presents two issues: What property is to be assessed, and what is the fair cash value of that property? You can't value something if you don't know what it is you're valuing.

There are two legal issues raised in the 2021 case, that will dictate what evidence needs to be filed in the 2022 case. The first issue involves the determination of what improvements are real property subject to taxation and what improvements are non-taxable personal property. At the BOR, there was significant disagreement on this issue, and as the PTAB knows from prior experience, the fundamental issue of what is assessable presents legal problems, often requiring a significant amount of evidence and testament. The question usually entails an examination of pre-1979 assessment practices at the subject and at other industrial facilities throughout the county. This case is in Madison County, which at least before 1979, was a heavy industrial county, with much more industry in comparison to counties such as Ford, Kendall, and Ogle, where previous real property issues have involved multiple week trials. In each of those cases, subsequent year's evidence filing was delayed.

The second issue involves the taxation of solidified pollution control equipment. There are approximately 80 certified pollution control facilities at the subject which have been assessed by the Department of Revenue, and these facilities have original costs exceeding a billion dollars. They are not subject to local assessment, nor is the assessment made by the DOR subject to review by the PTAB. At the BOR level, there was substantial disagreement about if all the pollution control facilities had been removed from local assessment and how much value should be removed. The pollution control issue involves the fundamental issue, what property should be assessed? Until resolution of the 2021 appeal, there is no agreement about what property is subject to assessment and if the parties are required to file 2022 evidence before resolution of the 2021 appeal, the parties are going to continue to go off on divergent paths. They will value different property. Conversely, once the 2021 decision resolves the fundamental issue and the parties know what to

appraise, handling 2022 and subsequent years will be much more straightforward, easier to resolve, and will dramatically increase the odds of settling 2022 and subsequent years.

Additionally, this case was very large at the BOR level in 2021, the positions of the parties diverged by more than a billion dollars, and the difference in 2022 is likely to be larger. The 2021 appeal is going to involve 1000s of pages of evidence, weeks of testimonies involving 6 or more expert witnesses, and has complicated legal issues. The cost of preparing and submitting this evidence is staggering and will double if they must move forward with 2022. Through experience with complicated and high value cases, when years of appeals in complex and costly cases are consolidated for trial, it takes longer to bring the cases to trial, longer to hold the trials, and longer to render the decisions. These delays are not good for anyone connected to the appeal. Therefore, the appellant requests the stay be granted for 2022 and 2021 be allowed to move forward. Alternatively, if PTAB declines to do so, the appellant requests a first extension of 90 days to prepare evidence for 2022.

Ms. Kinion moved to grant the appellant's motion for a request for a stay of the matter until the conclusion of the 2021 appeal with the requirement that the appellant files a motion to lift the stay within 90 days of the resolution of the 2021 appeal; it was seconded by Mr. Steffen, and it carried 5-0.

**Item C from Section 5 - Discussion of Motion**

Coal City (CC) CUSD 1, CC Fire Protection District, CC Public Library District, & Grundy County Board: 21-05709.001-I-3 (Grundy)

The Board acknowledged that Brittany Thesis and Stuart Whitt representing the appellants, Coal City (CC) CUSD 1, CC Fire Protection District, CC Public Library District, & Grundy County Board were present. Mike Andre, Terry Griffin, and Tom Atherton were present, representing the intervenor, General Electric-Hitachi.

Ms. Theis noted Witt Law LLC has never filed a request for a subpoena before the PTAB despite having decades of practice before the PTAB. The subject property is an extremely unique property and is the only commercial away from a reactor storage facility, leasing storage space to owners and operators of nuclear power plants with nuclear power fuel. There is no public database for information regarding the rental rates that are being charged. The assessed value of the subject property was brought before the Grundy County Board of Review (BOR) for the 2021 and 2022 assessment years. The intervenor in this matter was a party to both of those complaints. They engaged an appraiser and filed evidence and argument with the Grundy County BOR. One of the arguments made by the intervenor in the 2021 complaint, challenged the use of an extraordinary assumption, stating that it was not sufficient because it was based on limited rental rate data. This suggests the intervenor found the income and expense data relevant to the assessment litigation. However, in this context, the intervenor is in the best position to provide such

data. It's the PTAB policy to obtain full disclosure of relevant and material facts prior to the hearing. In this matter, the intervenor was not a party until a short time before the appellants made their request for subpoena. It's a unique procedural difference than a typical case where you see the taxing districts as intervenors, here the taxing district needed to file evidence and the other party is not notified until that evidence is filed with the PTAB. Based on the history of the review of the assessment of this property, the intervenor's claim it is too soon to determine whether the requested information is relevant, is disingenuous and contrary to prior arguments they have made. It is especially disingenuous when the intervenor has 3 named law firms on their replied motion. Recently, the PTAB ruled on a motion to compel and determined the requests for depositions and the production of documents were untimely when it was sought after the evidentiary filing period closed and in this matter the appellants, the represented taxing districts filed their requests very shortly after intervenors were named party and after they had received formal notice of the appeal. The appellants have taken efforts to obtain the requested information, including making informal requests to the intervenor, exhaustive searches of public records, and Freedom of Information requests to the U. S. Department of Energy, with negative results. Therefore, the appellants request PTAB issue the subpoena in accordance with their subpoena powers and policy. And if the PTAB declines to do so, the appellants request the intervenor be barred from challenging the Income and Expense Analysis and conclusions in the appellants' evidence and argument.

The intervenor is in a unique position of having access to the income and expense data and it is the only commercial away from reactor storage facility in the country where a private company is charging other companies for the use of its storage space. Therefore, there is no other comparable. Because there are no other data points, it is reasonable and appropriate for the appraiser to have relied upon extraordinary assumptions indicating that if this additional income and expense data is provided, it could show there are additional rental rates to be incorporated into their analysis. The appellants have been unable to obtain information from public sources over the last two years, and the intervenor has been unwilling to provide the data without being legally required to do so. Five total stations presumably have different contracts governing the amounts that is being paid. The different data points and incremental expense data may further elaborate on what an appropriate rental rate may be and would better inform their appraisers to determine whether they can remove the extraordinary assumption or not.

Mr. Andre informed this is an undervaluation complaint filed by the taxing bodies and it is important to note as a procedural aspect, the appellants are asking for an increase in the market value from \$18,395,000 up 3,770% to \$693,500,000. There was a hearing with the Grundy County BOR and the BOR decided not to use an income approach in its analysis, but rather a cost approach. Therefore, the intervenor filed an appeal with the PTAB. The taxing bodies have a burden of proof in this case alone. The appellants' evidence was received by the intervenor in January 2023, which includes an appraisal and approximately 2000 pages of evidence. The intervenor's deadline to submit its evidence is 04/19/2023,

and they have not submitted anything yet to the PTAB. The intervenor is in the process of reviewing the appellant's documents and formulating their response, and will be asking for an extension of time to review all the material. Mr. Andre asserts the appellant's subpoena information is not relevant or necessary to the formulation of an opinion of value, and it should be denied with prejudice. The subpoena is overly broad and unduly burdensome; it is also premature, given the status of the case.

The appellants are relying on PTAB rule section 1910.68, which states in determining whether to grant or deny a request, the board shall consider the reasonableness of the demand and whether the requested documents are relevant and necessary to derive an estimate of value of the real property under appeal. The taxing bodies have not met their burden because they have submitted their evidence, and it's a belated request. Their appraisers formulated an opinion of value without the need of any of the information listed in the subpoena request, therefore, their request is not necessary to determine an estimate of value and their request should be denied.

The request was not made to PTAB before presenting their appraisal report; their request was submitted five months after they submitted their evidence, and it is not timely. The request does not comply with the PTAB rules because it was not submitted with an affidavit from their designated appraisers stating that the information sought is necessary to obtain information essential to derive an estimation of value for the real property under appeal. The two affidavits submitted from their appraisers indicated it was for the purpose of removing an extraordinary assumption and not to derive an estimation of value. Appraisers make hypothetical and extraordinary assumptions all the time. If the appraisers did not feel they had sufficient information to provide an evaluation of opinion, they should not have accepted the appraisal assignment, and if the taxing districts do not feel they have sufficient credible evidence to present their appeal, then they should withdraw their appeal.

The subpoena request is an unreasonable demand at this stage of the proceeding because the taxing districts are asking the property owner to provide their evidence for them, which would set a terrible policy and precedence for the PTAB if the subpoena is granted. It will invite taxing districts to file undervaluation complaints based on defenseless or bad evidence and then demand the issuance of subpoenas to private companies and corporations, and that is not what this PTAB rule is designed for and will open the floodgate to future undervaluation litigation if granted. The taxing bodies will then know if PTAB granted, they can file something to initiate an appeal and then have PTAB do the work for them and demand information from private companies.

The burden of proof is on the appellants, this is an attempt to burden shift to the property owner, requiring the taxpayer to provide the evidence to file the taxing bodies' appeal. This will limit what the property owner is able to do. It is the intervenor's right to argue the appellants' evidence is insufficient, given the extraordinary assumptions. The intervenor has a right to submit no evidence. For special-use properties, the cost approach

is generally considered the best evidence to evaluate, and income is irrelevant. The intervenor has a right to issue evidence using the cost approach if they so choose, and if they deem to submit evidence using the income approach, whatever they submit would contain certain income information that the appellants would have at their disposal once the taxpayer files its evidence. The appellants' appraisers have determined that the subject property is income to the real estate, but, simply because the appraisers make that argument, does not mean it is true. Therefore, there is a strong argument that the appraisers are appraising the total value of the GE business operations, and the business records are irrelevant to the value attributed to the real estate.

The appellants made two requests to the taxpayer to obtain documents. One request was sent on 10/26/21, before the filing of any appeals to the BOR, and it is addressed to the plant manager, not a specific person, general counsel, legal department, lawyer, or subpoena compliance officer, just to GE, a multi-national global company. The second request was sent on 09/14/2022, prior to the property owner being a party to the appeal. The property owner asked the appellants for the legal basis that obligation a company to provide the requested information before they would send them any information. However, the property owner has not received a response. Therefore, the appellants efforts to obtain the information is not reasonable. The letters sent by the appellants should not be considered as due diligence on their part to obtain information. Additionally, what the appellants are requesting now is markedly different from what is stated in their letters. The subpoena is overall broad and burdensome. Therefore, the intervenor request that the appellants' motion be denied.

Ms. Theis countered that the substance of this case is unique, and the procedural process is also unique. The intervenor argued the appellants' request in their motion is premature and belated and that was the struggle the taxing bodies found themselves, as well. However, PTAB's practice and procedure section 1910 section 68 on subpoenas specifically require that a request be served on a party from who the testimony or documents are being sought be served at the same time, but the intervenor was not a party until they filed their request to intervene, which does not happen until the taxpayer receives formal notice. The appellants did check with the PTAB prior to that time to make sure that the taxpayer had not in fact filed a request to intervene sooner, because they were listed on PTAB's docket at an earlier date, but that was not in fact the case and they were not a party to this case until January 2023. In response to the intervenor's claim that the appellants do not have a legal authority; the appellants points to the subpoena powers to require the production of those documents. Their appraisers are confident in their appraisal with use of the extraordinary assumption and that's why the appellants provided the alternate request in their motion, which is comparable to the board's rule regarding inspections and the denial of requests for inspections, rule 1910.34.

Mr. Bilotta moved to deny the appellants' request for subpoena duces tecum and moved to deny their request to bar the owner intervenor from critiquing, refuting, discrediting, or

disproving the appellants' income and expense evidence without prejudice; Ms. Kinion seconded it, and it carried 5-0.

#### **4. Executive Director's Report**

See Addendum A.

Chairman Freeman moved to approve the Executive Director's Report. Ms. Kinion seconded the motion, and it carried 5-0.

#### **5. Discussion of Motions**

**a.** Winterset III Phase 2 Condo: #21-23346.001 thru .005-C-1(Cook) (Orland)

Chairman Freeman made a motion to deny the appellant's motion to reinstate; all other board members seconded the motion, and it carried 5-0.

**b.** This item was moved up in the agenda – see above.

**c.** This item was moved up in the agenda – see above.

**d.** Jon Hirschtritt: 20-47746.001-R-1 (Cook) (North Chicago)

Mr. Bilotta made a motion to vacate and reinstate the appeal; Chairman Freeman seconded the motion, and it carried 5-0.

**e.** Christopher Pfaff: 21-24775.001-R-1 (Cook) (New Trier)

Sally O'Brien: 21-24839.001-R-1 (Cook) (New Trier)

Abby Perksy: 21-24835.001-R-1 (Cook) (New Trier)

Matthew Campbell: 21-24836.001-R-1 (Cook) (New Trier)

Sharon Martin: 21-24777.001-R-1 (Cook) (New Trier)

Kenilworth 512, LLC: 21-24823.001 thru .003-R-1 (Cook) (New Trier)

Mr. Steffen made a motion to deny the untimely filed evidence and find the intervenors in default; Chairman Freeman seconded the motion, and it carried 4-1.

**f.** CTLTC Trust# 8002363525 & RODNE Inc: 19-09641.001-R-1 (Will)

William Cunha-CTLTC Trust# 8002363525 & RODNE Inc: 21-07851.001 thru .022-R-1 (Will)

William Cunha-CTLTC Trust# 8002363525 & RODNE Inc: 22-02864.001 thru .022-R-1 (Will)

Ms. Kinion made a motion to deny the request to reinstate; Chairman Freeman seconded the motion, and it carried 4-0; Mr. Bilotta abstained.

**g. End of Motions**

**6. Attachments**

**a. Attachment A** – Mr. Bilotta moved to approve the attachment. Ms. Kinion seconded the motion, and it carried 5-0.

**b. Attachment B** – Mr. Steffen moved to approve the attachment. Ms. Kinion seconded the motion, and it carried 5-0.

**c. Attachment C** - Mr. Bilotta moved to approve the attachment. Ms. Kinion seconded the motion, and it carried 4-0. Chairman Freeman recused himself.

**d. Attachment D** – Ms. Kinion moved to approve the attachment. Mr. Steffen seconded the motion, and it carried 4-0. Mr. Bilotta recused himself.

**e. Attachment E** – Mr. Bilotta moved to approve the attachment. Ms. Kinion seconded the motion, and it carried 4-0. Mr. Steffen recused himself.

**f. Attachment F** – Chairman Freeman moved to approve the attachment. Mr. Bilotta seconded the motion, and it carried 4-0. Ms. Kinion recused herself.

**g. Attachment G** – Chairman Freeman moved to approve the attachment. Mr. Steffen seconded the motion, and it carried 4-0. Ms. Buckley recused herself.

**h. Attachment Z** – Ms. Kinion moved to approve the attachment. Mr. Bilotta seconded the motion, and it carried 5-0 for all items except 6 and 9 and carried 4-0 for items 6 and 9; Ms. Buckley recused herself from items in Jefferson Township.

**7. Other Business**

**a. Workload Report:**

- There are 99,000 open cases. In 2021 there were 37,524 Cook County appeals, which is a record.

**8. Adjournment**

**a.** Ms. Kinion moved to adjourn the meeting at 11:18 a.m., and Mr. Steffen seconded the motion, carrying 5-0.



Respectfully Submitted,

/s/ Michael O'Malley

Michael I. O'Malley

Executive Director and General Counsel

Addendum A.



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## Executive Director's Report April 2023

1. HR/Fiscal Update:
  - a. HR: No updates
  - b. Fiscal Update: JJ, Carol, Dave S., and myself testified before the House appropriations hearing in Springfield on March 22<sup>nd</sup>. JJ and I will be testifying in Chicago before the Senate on April 12th.
2. IT Update:
  - a. E-filing – As of April 1st, we will reject any paper filings received in violation of our rules.
  - b. E-filing – Our IT staff is working on implementing the e-filing of evidence by parties who seek an extension to file their evidence and by taxing districts seeking leave to intervene.
  - c. We will bid for an e-filing vendor in April or May. This has to be done every year.
3. Proposed legislation:
  - a. HB-2232 – Amends the 35 ILCS 200/16-185 by adding, “Upon petition of a party to any case previously decided by the [PTAB], the [PTAB] shall reissue its prior decision.” The language has caused a significant amount of debate as to what the language means. I have spoken to the lobbyist who is pushing this bill. The bill’s purpose is to address Cook County’s Treasurer’s refusal to issue refunds based on outstanding PTAB decisions for a period of time the Treasurer has determined is too long to collect. Previously, an appellant requested that PTAB issue an order of revival, a practice we have ceased participating in because we do not have that authority. We have suggested language to clean up the confusion regarding this bill. Ultimately, this bill does not affect PTAB operations, although it may, as currently drafted, create more work for our support staff.
  - b. HB-3105 – Amends 35 ILCS 200/16-120; 16-160; & 16-185. The sponsor of this bill is Rep. Rashid. The purpose of this bill is to remove Cook County from PTAB’s jurisdiction. ALJ. Tom Kelley spoke with Rep. Rashid about this bill. Ultimately, this bill, if approved, would have a disproportional effect on low- and middle-income taxpayers who could not afford the filing fee in the circuit court. The filing fee for an SPO case in Cook County is \$368.
  - c. HB-4012 – Amends 35 ILCS 200/16-17 and adds 35 ILCS 200/16-167 & 30 ILCS 105/5.990. These are the highlights:
    1. Creates a supplemental fund that would collect any filing fees imposed by PTAB and reserve those funds for PTAB operations. (Carrot before the stick).

### BOARD MEMBERS

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Chicago

2. Requires the clerk of PTAB shall send a copy of a taxpayer's petition to the chief assessment officer and the board of review whose decision is being appealed.
3. The chief assessment officer, rather than the board of review, shall defend the assessment in any proceeding before the PTAB.
4. The BOR will not be required to submit the property record card.
5. In cases where a change in assessment over \$100,000 is requested, the burden of sending notice to taxing districts shifts from the BOR to the taxpayer.
6. The BOR decision will be presumed to be correct unless PTAB finds that the BOR's decision is clearly erroneous.
7. Eliminates PTAB's de novo standard.

4. Future Board Meetings:

- a. The Governor has extended the disaster proclamation regarding COVID until May 11<sup>th</sup>. The extension allows PTAB to hold its Board meetings remotely until June.
- b. 2023 Board Meeting Schedule:

<b>Date</b>	<b>DPO</b>	<b>SPO</b>	<b>Remote *</b>
May 9 <sup>th</sup>	Sarah Buckley	Dana Kinion	
June 20 <sup>th</sup>	Kevin Freeman / Sarah Buckley	Dana Kinion	Jim Bilotta / Bob Steffen (out of country)
July 11 <sup>th</sup>	Bob Steffen / Jim Bilotta	Dana Kinion	Kevin Freeman / Sarah Buckley
August 15 <sup>th</sup> (State Fair)	Sarah Buckley	Dana Kinion / Kevin Freeman	Jim Bilotta / Bob Steffen
September 12 <sup>th</sup>	Bob Steffen / Sarah Buckley	Dana Kinion	Kevin Freeman / Jim Bilotta
October 10 <sup>th</sup>	Jim Bilotta / Bob Steffen	Dana Kinion	Kevin Freeman / Sarah Buckley
November 14 <sup>th</sup>	Kevin Freeman / Jim Bilotta	Dana Kinion	Bob Steffen / Sarah Buckley
December 12 <sup>th</sup>	Sarah Buckley / Bob Steffen	Dana Kinion	Kevin Freeman / Jim Bilotta

\* After May 11<sup>th</sup>, 2023, the Board must vote to allow members to appear remotely.

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